



C.R.P. No.1225 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. No.1225 of 2019

&

C.M.P.No.7872 of 2019

M/s.Axis Thermal Engineering Company,
Represented by its Proprietrix,
Devi Seenuvasan,
No.105-C, Sanganoor Road,
Ganapathy, Coimbatore - 641 006.

... Petitioner

Versus

M/s. Abdul Aziz O. Alomran & Company,
P.O.Box No.13426,
Riyadh - 11493 (Saudia Arabia).
Respondent

...

(cause title accepted vide Court order dt.18.03.2019
made in C.M.P.No.6515/2019 in C.R.P.SR.No.33366/2019)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 23.02.2018 made in I.A.No.471 of 2017 in O.S.No.1920 of 2015 on the file of the Fifth Additional District Munsif at Coimbatore.



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For Petitioner	...	Mr.Subbiah, Senior Counsel for Ms.Elizabeth Ravi
For Respondent	...	Mr.K.R.Arun Shabari

ORDER

This Civil Revision Petition is directed against the order dated 23.02.2018 made in I.A.No.471 of 2017 in O.S.No.1920 of 2015 on the file of the Fifth Additional District Munsif at Coimbatore.

2. The Revision petitioner is defendant in the suit in O.S.No. 1920 of 2015 before the Fifth Additional District Munsif at Coimbatore. The respondent/plaintiff filed the said suit for the following reliefs:-

"(a) pass a decree of permanent Injunction thereby restraining the defendant and/ or its authorized representatives, employees, servants, agents and/ or assignees from selling, alienating, damaging, wasting, defacing, transferring or creating any third party rights in the following equipments:

- *Rotary Furnace & drive system,*
- *Refractory items, combustion system (i.e.combustion chamber, burner and all its accessories) and;*
- *Control panel*

(b) Pass a decree of mandatory injunction thereby directing the defendant and/ or his employees, servants, agents and/ or assigns, etc, to supply the following equipments to the plaintiff:

- *Rotary Furnace & drive system,*
- *Refractory items, combustion system (i.e.combustion chamber, burner and all its accessories) and;*
- *Control panel*

(c) Pass an order awarding costs of the suit in favour of plaintiff and against the defendant;



3. From the reading of the plaint, it is seen that the suit is on the basis of contract for supply of the furnace equipments which was awarded to the defendant. The plaintiff and the defendant companies are incorporated under Companies Act, 1956. Alleging that the defendant had failed to perform their contractual obligations, the suit is laid.

4. With regard to the cause of action, in paragraph 53 of the plaint, it is stated that the cause of action arose in March, 2013 when the defendant started raising issues regarding the terms of the LC and demanded change of the terms of the LC and consequently threatened to stop production of the material. It is also stated that the cause of action further arose in January, 2014 when the defendant sought extension till 28.02.2014.

5. The defendant in the suit, even before filing the written statement presented I.A.No.471 of 2017 to reject the plaint filed under Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC'). Apart from the allegations with regard to the wrong description of the parties in the cause title and disputing the averments in the plaint, the application under Order VII Rule 11 of CPC is filed on the basis of what is stated in the paragraph No.6 of the statement found in the affidavit in support of the petition, which reads as



follows:-

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“ 6. The plaintiff has come to this Court with unclean hands. There are no merits in the suit. The suit lacks bonafide. The suit is barred by Limitation. The valuation of the claim is also wrong and incorrect. Further, there is no proper cause of action for the suit and the plaintiff has not averred or raised any cause of action in the suit. In fact, the para containing the cause of action in the plaint contains nothing and there is no basis for the suit through any of the cause of action. Only when there is demand for the claim amount, the suit for the recovery amount lies. The said demand is one of the cause of action and the plaint does not contain any such demand. Assuming but without admitting the liability by the petitioner/defendant, if really the suit claim is a true and genuine one, then the cause of action must be there for the demand. Whether the claim is true or not can be seen only the trial of the suit, however, the cause of action must contain the demand of the claim. The present suit lacks any such cause of action. Thus, the suit is barred by the law and has to be rejected at the threshold. Instead of going through an elaborate trial by wasting the time of the court, the present petition for the rejection can be decided. Moreover, the firm or the company must be represented by some person in the official capacity and the present plaint does not disclose any such details. There is no legal basis and entity to the present suit and the plaintiff.

6. From the affidavit filed in support of the petition, this Court is unable to find any factual foundation for the petition under Order VII Rule 11 of CPC. The cause of action paragraph in the plaint clearly indicates that it is in time. Similarly, the plaint discloses the cause of action.



7. The Application filed by the Revision Petitioner was dismissed by the lower Court holding that the petitioner/defendant has not established any of the grounds falling under Order VII Rule 11 CPC. It was pointed out that the plaintiff has already filed a petition in I.A. No.1572 of 2017 for amendment of plaint, which is pending. Learned counsel for the petitioner is unable to substantiate his case to reject the plaint under Order VII Rule 11 of CPC.

8. The other contention in the affidavit filed in support of the petition is that the valuation of the suit is wrong. Order VII Rule 11 of CPC reads as follows:

Order VII Rule 11. Rejection of plaint

The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;



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(f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

9. Learned counsel for the petitioner submitted that both the reliefs are valued under Section 27 (c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Even assuming that the suit is wrongly valued, it is open to the petitioner to raise the issue that the suit is undervalued. There can be a direction to value the property, if it is established before Court. The plaint can be rejected only if the plaintiff fails to correct the valuation within the time fixed by the Court. Though it is open to the petitioner to file appropriate application to get a direction from the Court regarding proper valuation of plaint, till then there is no scope for filing a petition under Order VII Rule 11 of CPC. This Court is unable to find any other irregularity in the order passed by the lower Court in dismissing the petition under Order VII Rule 11 of CPC.



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10. In view of the above facts and circumstances, this Court finds no merit in this Civil Revision Petition. Therefore this Petition is dismissed.

Connected Miscellaneous Petition is also dismissed. No costs.

14.12.2021

rkp/gba

To
The Fifth Additional District Munsif,
Coimbatore.



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S.S.Sundar., J

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