

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

**C.R.P. (PD) No. 1085 of 2016
and
C.M.P. No. 5993 of 2016**

M/s. Anglo French Textiles,
(Unit of Puducherry Textiles Corporation),
Cuddalore Road,
Mudaliarpeta,
Puducherry - 4.
Rep. by its Assistant Manager,
D.P. Chintamani (Home Sales).

... Petitioner

-vs-

1. M/s. Sivaram Agencies,
Rep. by its Partner,
K.Srikantan,
S/o. Late H.V.Krishnamurthy,
Office at No. 80, Godown Street,
Chennai - 600 001.

2. T.S.Rajalingam

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decretal order dated 29.01.2016 made in I.A. No. 2204 of 2015 in O.S. No. 67 of 2011 on the file of the Principal District Judge at Puducherry, and allow the Civil Revision Petition.

For Petitioner : Mrs. N.Mala

For Respondents : No appearance

ORDER
(The case has been heard through video conference)

The Civil Revision Petition has been filed against the fair and decretal order dated 29.01.2016 in I.A. No. 2204 of 2015 in O.S. No. 67 of 2011 passed by the Principal District Court, Puducherry.

2. Brief facts of the case:-

The Petitioner is the Plaintiff and the Respondents are the Defendants. The Petitioner/Plaintiff has filed O.S. No. 67 of 2011 against the Respondents/Defendants claiming an amount of Rs. 1,37,11,985.65 in respect of materials supplied to them. The First Respondent/First Defendant has filed written statement and in the written statement, he has also raised counter claim of Rs. 44,30,626.62/- against the Petitioner/Plaintiff. However, he has not paid the necessary court-fees in respect of such counter claim. The Petitioner/Plaintiff had earlier filed I.A. No. 718 of 2015 under Section 11(3) read with Section 14 of the Pondicherry Court-Fees and Suits Valuation Act, 1972, seeking the Court to determine the court-fees payable by the First Respondent/First Defendant for the counter claim made by him in the written statement and to direct him to pay such court-fees before trying any other issues in the suit. After hearing both sides, the Trial Court by order dated 21.04.2015

directed the First Respondent/First Defendant to pay necessary court-fees in accordance with law as contemplated under Order VIII Rule 6 of the Code of Civil Procedure, 1908, read with Section 14 of the Pondicherry Court-Fees and Suits Valuation Act, 1972. However, time was not fixed. The First Respondent/First Defendant had not paid the court-fees. While framing issues, the Trial Court had also framed a issue as issue No. 3, which reads as follows:-

"Whether the written statement filed by the 1st Defendant is liable to be struck off, in view of non payment of necessary court fees on the counter claim?"

Meanwhile, the Petitioner/Plaintiff had filed an application in I.A. No. 2204 of 2015 seeking to reject the claim since the court-fees has not been paid. The First Respondent/First Defendant resisted the application on the ground that the written statement has been filed under Order VIII Rule 1 of the Code of Civil Procedure, 1908 and not under Order VIII Rule 6-A of the Code of Civil Procedure, 1908. It was also further contended by the First Respondent/First Defendant that the averments in the written statement are inseparable and consequently, the same cannot be struck off. The Trial Court by order dated 29.01.2016 in I.A. No. 2204 of 2015 in O.S. No. 67 of 2011 dismissed the petition filed by the Petitioner/Plaintiff against which, the Civil Revision Petition has been filed.

3. The Learned Counsel for the Petitioner/Plaintiff would submit that the First Respondent/First Defendant had made a counter claim for an amount of Rs. 44,30,626.62/-. However, he had not paid the court-fees in respect of the same. She would further submit that the Trial Court ought to have rejected the written statement when a counter claim has been made by him, whereas the Trial Court erroneously dismissed I.A. No. 2204 of 2015 by order dated 29.01.2016. She would further submit that since the counter claim has to be treated as plaint for all practical purposes, the same analogy and legal principle that a plaint should be struck off when court-fees are not paid, should be similarly applied, and when court-fees are not paid on the counter claim, the same should also be struck off.

4. There is no representation for the Respondents when the matter is called.

5. Heard the Learned Counsel for the Petitioner/Plaintiff and perused the materials placed on record.

6. The Trial Court found the First Respondent/First Defendant has raised other defences, including jurisdiction and limitation in the written statement

and that in the event of court-fees are not paid, the Court cannot even consider the aspects relating to the counter claim. Further, the Trial Court has held that the First Respondent/First Defendant shall face the consequences of his own inaction when he is called in question and rendered a finding that the entire written statement filed by the First Respondent/First Defendant cannot be struck off since the written statement has been filed only under Order VIII Rule 1 of the Code of Civil Procedure, 1908 and not under Order VIII Rule 6-A of the Code of Civil Procedure, 1908. Therefore, the Trial Court had rightly rejected the application for rejection of counter claim of the First Respondent/First Defendant. Viewed from that perspective, there does not appear to be any infirmity in the order dated 29.01.2016 in I.A. No. 2204 of 2015 in O.S. No. 67 of 2011 warranting any interference by this Court in the exercise of discretionary process under Article 227 of the Constitution.

7. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.07.2021

vjt

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

A.D. JAGADISH CHANDIRA, J.

vjt

To

The Principal District Court,
Puducherry.



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