

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2880 of 2018

and

CMP.Nos.16912, 16913 & 16914 of 2018

K.Sankar

..Petitioner

Vs.

1.V.Veeraraghavalu

2.V.Subramanian

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 27.11.2017 passed in unnumbered OS.No. Of 2017 (19 R.No.16601 filed on 04.09.2017) on the file of the Principal Subordinate Judge, Villupuram

For Petitioner : Mr.R.Thiagarajan

For Respondents : No appearance

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ORDER

This Civil Revision Petition is filed against the order dated 27.11.2017 passed in unnumbered OS.No. Of 2017 (19 R.No.16601

filed on 04.09.2017) on the file of the Principal Subordinate Judge, Villupuram, thereby rejecting the plaint as barred by limitation.

2. The learned counsel for the petitioner submitted that the petitioner filed suit for specific performance. The limitation under Article 54 of Limitation Act is applicable for the suit for specific performance. There are two limbs in Article 54 of Limitation Act. Accordingly, the suit has to be filed within a period of three years from the date fixed in the agreement. If no time has been fixed for the purpose of the contract, as per Article 54 of Limitation Act, when the denial of performance to be taken into account for calculating the period of three years to file the suit. The petitioner categorically stated that the limitation would start running from the date of refusal to perform the contract, since no specific date was fixed to perform their part of the contract. The court below rejected the plaint for the reason that the suit was filed on 04.09.2017 on the strength of the agreement dated 06.11.2009. Therefore, the suit was not filed within the period of three years from the date of the agreement i.e. 06.11.2009, when the date for performance as per the agreement is fixed on or before 28.02.2010. He further submitted that it is a matter for trial and without even numbering the plaint, it cannot be rejected on the ground of barred by limitation.

3. Considering the submissions of the learned counsel for the petitioner, this civil revision petition is allowed and the order dated 27.11.2017 passed in unnumbered OS.No. Of 2017 (19 R.No.16601 filed on 04.09.2017) on the file of the Principal Subordinate Judge, Villupuram is set aside. The court below is directed to number the suit and try the issue in respect of limitation as well as bar of the suit as preliminary issue and decide the same. Consequently, connected miscellaneous petitions are closed. No order as to costs.

29.07.2021

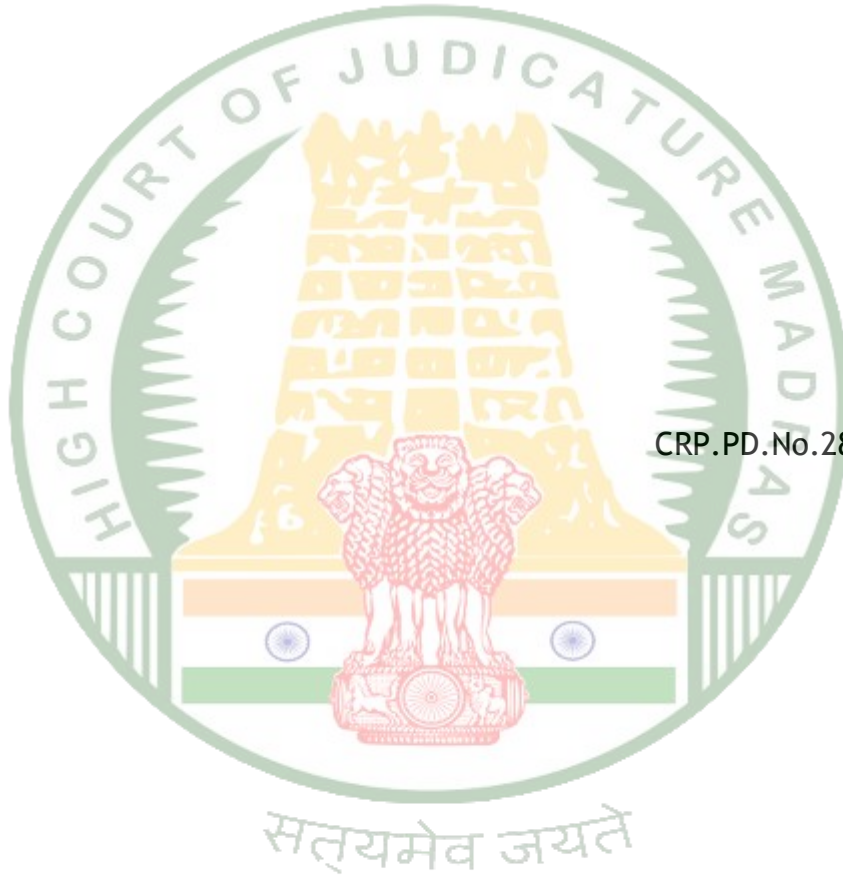
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To
The Principal Subordinate Judge,
Villupuram

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G.K.ILANTHIRAIYAN,J.

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