



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.1488 of 2021
and
C.M.P.No.11727 of 2021

J.V.Chowdhury

.. Petitioner/Defendant

Vs.

Seetha Balasubramanyam

.. Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 26.03.2021, passed in I.A.No.4 of 2019 in OS.No.461 of 2019, on the file of the I - Additional District cum Sessions Judge, Coimbatore.

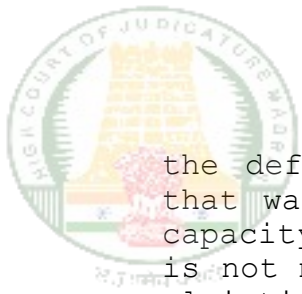
For Petitioner : Mr.P.B.Balaji
For Mr.P.B. Ramanujam
For Respondent : Mr.K.R.Sankaran

O R D E R

This civil revision petition is directed against the order dismissing the application filed under Order VII Rule 11(a) of C.P.C., seeking rejection of the plaint on the ground that it does not disclose a cause of action. The respondent / plaintiff laid the suit for recovery of money, recovery of movable property of the Company and for costs.

2.The claim of the plaintiff is that the plaintiff and the defendant were Directors of a Company, which was registered in the name of Kiliyanoor Traditions Private Limited. According to the plaintiff, she had effected transfer of monies to the accounts of the Company from her personal account and that there is a sum of Rs.1,65,10,918/- due and payable to her by the Company. It is further claimed that the defendant has also taken away the Tata Nano Car belonging to the Company. The plaintiff therefore, seeks a decree for money and for return of the movable property namely, the Car.

3.The defendant filed a written statement denying the claim and also followed it up with an application under Order VII Rule 11 of C.P.C., seeking rejection of the plaint on the ground that the plaint does not disclose a cause of action. According to



the defendant, the plaintiff cannot seek recovery of the money that was paid by her to the Company from him in his individual capacity, the suit filed against him in his individual capacity is not maintainable and that there is no cause of action for the plaintiff to launch the suit against the defendant in his individual capacity. A detailed counter was filed to this petition. The learned District Judge vide order dated 26.03.2021 dismissed the application.

4.I have heard Mr.P.B.Balaji, learned counsel appearing for the petitioner and Mr.K.R.Sankaran, learned counsel appearing for the respondent.

5.Though the learned counsel for the respondent would attempt to make submissions on merits, I am satisfied that in view of the manner in which the application has been disposed of by the learned District Judge, the order of the learned District Judge deserves to be set aside and the matter is remitted back to the Trial Court to be disposed of afresh in accordance with law. The learned District Judge has not answered any of the issues that arose in an application filed under Order VII Rule 11(a) of C.P.C. The specific claim of the defendant in the affidavit filed in support of the application is that the monies were advanced to the Company and therefore, the suit filed against the defendant in his individual capacity is not maintainable and the plaintiff does not have a cause of action to sue against the defendant. This important issue has not been answered by the learned Trial Judge. The learned Trial Judge has just said that in Paragraph 13, the plaintiff has alleged a cause of action and therefore, the suit cannot be dismissed on the ground of lack of cause of action or absence of cause of action. This kind of disposal is wholly unsatisfactory and the order of the learned District Judge suffers from total non-application of mind.

6.Therefore, this Civil Revision Petition is allowed, the order of the learned District Judge dated 26.03.2021 is set aside, I.A.No.4 of 2019 is remitted back to the Trial Court to be disposed of afresh in accordance with law without being influenced by any of the observations made herein above. No costs. Consequently, connected miscellaneous petition is closed. The learned District Judge will proceed to dispose of the application on merits taking into account all questions raised in the application.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



kkn

To:-

The I-Additional District cum Sessions Judge,
Coimbatore.

+1cc to Mr.P.B. Ramanujam, Advocate, S.R.No.57772

C.R.P. (PD) .No.1488 of 2021 and
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VBM(CO)
CT 03/12/2021