IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM :

**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

C.R.P (PD).No.3134 of 2018
and
Cmp.No.18016 of 2018

N.Ramesh ... Petitioner

**Versus**

1.Dinesh Kumar Jain

2.Authorised Officer/Manager,
Indian Bank,
Vellore Main Branch,
Vellore.

3.Iqbal Ahmed ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 20.03.2018 made in I.A.No.49 of 2018 in O.S.No.242 of 2010 on the file of the Additional Sub-Court, Vellore, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.Om Parakash, Senior Counsel,
for M/s.Ramalingam & Associates. (for R1)

: Mr. Jayesh B.Dolia
for M/s.Aiyar & Dolia. (for R2)

: No Appearance (for R3)

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**ORDER**

When the matter is taken up, the learned counsel for the petitioner invited the attention of this Court to the order passed by this Court on 10.10.2018. It would appropriate to extract the said order portion hereunder:-

> "It is the submission of the learned counsel for the petitioner that the Trial Court may not be justified in rejecting the petitioner's request to withdraw the suit under Order 23 Rule 1 of CPC, since an unconditional request has been made and that the Court is also at liberty to proceed with the counter claim made by the defendants therein.
>
> 2.Since the petitioner seeks for unconditional withdrawal of the suit alone and not the counter claim, the Trial Court may not be justified in rejecting the petitioner's request. Though the petitioner has sought for stay of the entire proceedings is O.S.No.242 of 2010, there shall be an order of limited staty insofar as the proceedings initiated on the petitioner in O.S.No.242 of 2010 and that the Trial Court will be at liberty to proceed with the counter claim made by the respondents therein.
>
> 3.Notice to the respondents returnable by 19.11.2018. Private Notice is also permitted. The learned counsel appearing for the revision petitioner is permitted to serve notice on the learned counsel appearing for the respondents before the Trial Court. Post the matter on 19.11.2018. "

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2.Upon perusing the above said order, it is seen that this Court directed the Lower Court to proceed with the counter claim.

3.The learned counsel for the petitioner submits that already this Court permited the Lower Court to proceed with the counter claim and he is continuing the same. Therefore, he may be permitted to withdraw the suit alone from adjudication and he fairly submits that the counter claim is concerned, the same shall be proceeded and agitated accordingly.

4.The learned Senior Counsel appearing for the first respondent submitted and reiterated that the revision petitioner may be permitted to withdraw his suit and the counter claim filed by the first respondent herein shall continue and adjudicated.

5.In view of the above submissions, this Court is of the view that it would be appropriate to direct the Court below to permit the revision petitioner to withdraw the suit filed by the plaintiff in O.S.No.242 of 2010 from adjudication and shall continue the same to adjudicate the counter claim made by the first respondent herein.

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**KRISHNAN RAMASAMY, J.**

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6.With these observations and directions, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**19.02.2021**

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

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To

The Additional Sub-Court, Vellore, Vellore District.

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