



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (NPD) (MD) No.2313 of 2012

and

MP(MD) No.1 of 2012

M/s.Hindustan Trading Company
Rep.by its Managing Partner
Mr.Edwin Alex
No.30-A, Eagle Gate
Court Road, Nagercoil
Agasteeswaram Taluk
Kanyakumari District

... Petitioner/Respondent/Plaintiff

-vs-

P.Krishnan

... Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order dated 23.07.2010 made in I.A.No.715 of 2009 in O.S.No.592 of 2004 on the file of the I Additional District Munsif, Nagercoil.

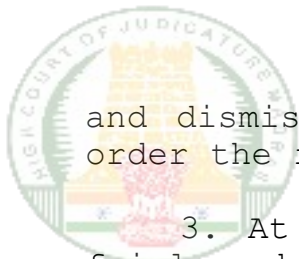
For Petitioner : Mr.T.Selvakumaran

For Respondents : Mr.Nallathambi
for Mr. R.Murugan

O R D E R

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 23.07.20210 made in I.A.No.715 of 2009 in O.S.No.592 of 2004 on the file of the I Additional District Munsif, Nagercoil.

2. The revision petitioner is the plaintiff in O.S.No.592 of 2004 on the file of the I Additional District Munsif, Nagercoil. The respondent/defendant had filed I.A.No.715 of 2009 under Order 14 r/w.2 and Section 151 of the code of Civil Procedure to frame the preliminary issue whether the suit filed by the plaintiff an unregistered partnership firm is maintainable in law. The trial Court by the impugned order dated 23.07.2010 allowed the petition



and dismissed the suit as not maintainable. Challenging the above order the revision has been filed by the petitioner/plaintiff.

3. At the outset the learned counsel for the petitioner would fairly submit that as against the impugned order only an appeal will lie since the trial Court had conclusively decided and determined the right of the petitioner with regard to the suit. The petitioner should have filed appeal before the appellate Court namely Sub Court, whereas on wrong advice and premise he had filed revision before this Court. The learned counsel would further submit that the petitioner is a *bonafide* party and he had prosecuted the proceedings before this Court in good faith and thereby he would pray that the time taken by the petitioner before this Court may be excluded invoking Section 14 of the Limitation Act, 1963 and the petitioner may be permitted to file an appeal before the concerned Sub Court.

4. Per contra, the learned counsel for the respondent would submit that the order impugned was passed on 23.07.2010 and against that order an appeal as contemplated under Section 96 of the Code of Civil Procedure ought to have been filed within a period of 30 days, whereas in this case revision before this Court has been filed on 03.10.2012 after a long delay of two years and three months and thereby without necessary application to condone the delay in filing, the appeal cannot be numbered before the appellate Court. He would further submit that mistake has been committed by the petitioner/plaintiff and therefore in the event any decree being passed in favour of the plaintiff in the appeal, the petitioner may not be entitled for any interest for the period taken for pursuing the revision before this Court.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The order passed in I.A.No.715 of 2009 in O.S.No.592 of 2004 by the learned I Additional District Munsif, Nagercoil amounts to a decree as per Section 2(ii) of the Code of Civil Procedure since it has conclusively determined the right of the plaintiff/petitioner. In view of the same, only an appeal will lie against the order, whereas the petitioner has preferred revision before this Court.

7. It is submitted by the learned counsel for the petitioner that on wrong advice, the revision has been filed and it has been bonafidely pursued.

8. In view of the same the Civil Revision Petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed. However liberty is granted to the petitioner to file an appeal before the concerned Court. It is made clear that the petitioner shall file appropriate application for condoning the delay in filing the Appeal before the Court concerned. In the event



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of petitioner succeeding he shall not be entitled for any interest for the period taken in pursuing the revision before this Court.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The I Additional District Munsif, Nagercoil.

2.The Section Officer,
E.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-28130[F] dated 03/09/2021)

+1 CC to M/s.R.MURUGAN, Advocate (SR-28107[F] dated 03/09/2021)

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