



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:17.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P (MD) No.497 of 2021

P.Manikandan

:Petitioner / Plaintiff

-Vs-

M.Meenakshi Sundaram

:Respondent / Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 19.01.2021 in unnumbered O.S.No./2019, SR.No.21529 of 2019 dated 13.11.2019 on the file of the Principal Subordinate Judge, Madurai and consequently direct to number and take up the suit in O.S.No.SR.No.21529/2019 on the file of the Principal Subordinate Judge, Madurai.

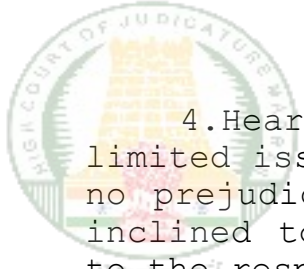
For Petitioner: Mr.P.Ganapathi Subramanian

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the order dated 19.01.2021 passed by the Court below rejecting the plaint on the ground of limitation.

2.It is seen that the petitioner/plaintiff presented the plaint seeking the relief of a direction to the respondent/defendant to pay Rs.3,93,120/- with interest from the date of plaint till realization. Without event numbering the plaint, the Court below called upon the case in the open Court on 19.01.2021 and rejected the plaint holding that as the plaint has been presented beyond the prescribed period of limitation, it could not be taken on file. Questioning the same, the petitioner/plaintiff has filed this Civil Revision Petition.

3.The learned counsel for the petitioner submitted that the question of limitation is a mixed question of law and fact and therefore, the Court below ought not to have rejected the plaint at the threshold and that the Court below ought to have taken the plaint on file and provided an opportunity to the petitioner/plaintiff to show as to whether the suit is not barred by limitation, through evidence, if any. He would further submit that the respondent/defendant admitted the receipt of amount from the plaintiff and subsequently only failed to keep his promise as he agreed and hence, the question of limitation will start from the date of denial or refusal and therefore, the suit is well within a period of limitation. Without considering the same, the Court below has rejected the plaint. Thus, he prayed to allow this revision petition.



4. Heard the learned counsel for the petitioner. In view of the limited issue involved in this petition and in view of the fact that no prejudice would be caused to the respondent, this Court is not inclined to issue notice to the respondent and accordingly, notice to the respondent is dispensed with.

5. As rightly stated by the petitioner/plaintiff, the question of limitation is a mixed question of law and fact. Rejection of plaint on the ground of limitation without framing an issue on limitation and without recording evidence is contrary to law. In this case, it appears that the trial Court on its own took up the ground of limitation and rejected the plaint. The Court below is not justified in simply rejecting the plaint at the entertaining stage itself without giving an opportunity to put forth the case to the petitioner/plaintiff through evidence.

6. In view of the above, the impugned order is set aside and the Court below is directed to take the plaint on file and number the same, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order. The respondent/defendant is at liberty to raise necessary pleadings in the written statement with regard to maintainability of the suit. The trial Court can exercise its power under Order 7 Rule 11 of C.P.C by framing a preliminary issue with regard to maintainability of the suit and dispose of the same in accordance with law.

7. With the above direction, the Civil Revision Petition stands disposed of. No costs.

Sd/-

ASSISTANT REGISTRAR (RTI Act)

/TRUE COPY/

/ /2021

SUB ASSISTANT REGISTRAR (CS)

To

The Principal Subordinate Judge,
Madurai.

+1CC to Mr. P. GANAPATHI SUBRAMANIAN, Advocate (SR-12358 dated 19/03/2021)

bala (PA) MJ (CO)
RP/12.05.2021/2P/3C.

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