



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	27.09.2021
DELIVERED ON	22.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P (MD) No.1324 of 2021

and

C.M.P. (MD) No.7617 of 2021

P.Raju

...Petitioner/Petitioner/Defendant

Vs.

Muthulakshmi

...Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by calling for the records pertaining to the impugned order passed by the Court of the learned Principal District Judge, Theni, in I.A.No.1 of 2020 in O.S.No.21 of 2017, dated 11.02.2021, set aside the same and consequently strike off the plaint in the said suit.

For Petitioner : Mr.Issac Mohanlal
Senior Advocate for
M/S.Issac Chambers

For Respondent : Mr.M.A.M.Raja

O R D E R

The Civil Revision Petition has been filed by the revision petitioner to set aside the order, dated 11.02.2021 passed by the learned Principal District Judge, Theni, in I.A.No.1 of 2020 in O.S.No.21 of 2017 and consequently strike off the plaint in the said suit.

2.The respondent herein/plaintiff has filed a suit in O.S.No.21 of 2017, on the file of the Principal District Court, Theni, against the revision petitioner/defendant for the relief of declaration to declare that the partnership deed of PRV properties was dissolved in pursuance of notice, dated 03.03.2017 sent by the respondent herein/plaintiff and for other reliefs.

3. The revision petitioner/defendant has filed a petition in I.A.No.1 of 2020 in O.S.No.21 of 2017, under Order 7 Rule 11 of Civil Procedure Code, seeking to reject the plaint and the same was dismissed on 11.02.2021. Aggrieved over the same, the instant



Civil Revision Petition is filed.

4. Heard Mr. Issac Mohanlal, learned Senior Advocate for Issac Chambers, appearing for the revision petitioner and Mr. M.A.M. Raja, learned counsel appearing for the respondent. Perused the material documents available on record.

5. The revision petitioner/defendant has filed this Civil Revision Petition to strike off the plaint in O.S.No.21 of 2017 and to set aside the Order, dated 11.02.2021 passed by the learned Principal District Judge, Theni, in I.A.No.1 of 2020 in O.S.No.21 of 2017.

6. The respondent/respondent/plaintiff has filed the suit in O.S.No.21 of 2017 for the following reliefs:

(i) to declare that the partnership deed or PRV properties was dissolved in pursuance of notice dated 03.03.2017 sent by the plaintiff to the defendant;

(ii) to direct the defendant to render the true and proper accounts in respect of the said partnership deed in respect of all transaction including sale and purchase of properties;

(iii) to pass a preliminary decree for partition in respect of the allotment of half share of the plaint schedule properties after deleting the properties sold by the defendant; and

(iv) to pass decree for permanent injunction restraining the defendant from any way alienating and encumbering the plaint schedule properties by suppressing the dissolution of partnership deed or by the plaintiff to the defendant with effect from the date of receipt of the notice on 04.03.2017.

7. The revision petitioner/defendant has filed a petition in I.A.No.1 of 2020 in O.S.No.21 of 2017, under Order 7 Rule 11 of Civil Procedure Code, to reject the plaint on the ground that the Civil Court has no jurisdiction by virtue of specific clause in the partnership deed, the parties have to work out their remedy only before Arbitration forum. Already the parties have availed remedy before the Arbitration forum.

8. In support of his case, the learned counsel appearing for the revision petitioner relied upon the following rulings.

(i). 2007(3) Supreme Court Cases 686, Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens and Others.

(ii). (2003) 6 Supreme Court Cases 503, Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums.

(iii) 2013 SCC Online Mad 271, M/s. Diamond Jewel and another one Vs. T.R.C. Muralidharan Partner and another one.

(iv) (2012) 2 Supreme Court Cases 93, Reva Electric Car Company Private Limited Vs. Green Mobil.



(v) **Order in Special Leave to Appeal (C) No.25730 of 2019, The State of Bihar Vs. M/s.Bhaibhaw Construction Pvt. Ltd.**

(vi) **(2018) 16 Supreme Court Cases 299, Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation.**

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9.The respondent herein/plaintiff has filed counter in I.A.No.1 of 2020 and stated that already he has filed a suit in O.S.No.1 of 2016 on the file of the District Munsif Court, Periyakulam. As per the direction of this Court, she has filed a claim petition before the Arbitrator in C.P.No.145 of 2019 the same was dismissed as barred by limitation. The respondent herein has filed Ar.O.P.No.32 of 2020 and the petition is still pending.

10.But, now partnership deed is not in existence. As per Clause 14 of the agreement, she sent a notice to the petitioner and dissolved the partnership. Therefore, the suit is maintainable. Further, the Arbitrator also stated in his findings that judicial trial is necessary for the dispute.

11.There is no doubt, even though a partnership dissolved the agreement for arbitration is still exists. The Section 8(1) of Arbitration Act, is extracted hereunder:

"Power to refer parties to arbitration where there is an arbitration agreement.-

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreements exists. "

12.The revision petitioner/defendant has filed written statement on 11.12.2017. The revision petitioner has not filed any petition to invoke Section 8 of Arbitration Act before filing written statement.

13.As per Judgment of the Hon'ble Supreme Court in **C.A.No.5440 of 2002** in the case of, **Booz Allen and Hamilton Inc Vs. SBI Home Finance Ltd. & Ors.**, after lapse of three years from the date of filing his written statement, the revision petitioner

<https://hcservices.ecourts.gov.in/hcservices/>



has filed the petition under Order 7 Rule 11 of Civil Procedure Code, and therefore, he cannot rely on the Judgment filed by him.

14. The revision petitioner/defendant has filed the petition in I.A. No.1 of 2020 in O.S.No.21 of 2017, under Order 7 Rule 11 of Civil Procedure Code to reject the plaint. The revision petitioner can file rejection of plaint only on the ground stated under Order 7 Rule 11 of Civil Procedure Code.

15. The Order 7 Rule 11 of Civil Procedure Code is extracted hereunder:

"11. Rejection of Plaint:-

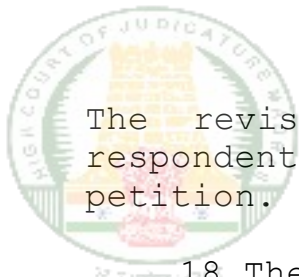
The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action,*
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from connecting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

16. As per his contention already the respondent/plaintiff approached Arbitration as per arbitration clause in the partnership deed. Therefore, the respondent/plaintiff can seek remedy only before the Arbitration.

17. The revision petitioner and the respondent are partners.



The revision petitioner denied the capital invested by the respondent. The respondent has raised a plea of fraud in the petition.

18. The Hon'ble Supreme Court has delivered the Judgment in **Civil Appeal Nos. 8245-8246 of 2016** in the case of **A. Ayyasamy Vs. A. Paramasivam and Ors.**, is as follows:

"In this view of the matter, we see no infirmity in the impugned order so as to be interfered with by this Court. The petitioner, who is a party to the arbitral proceedings may raise the question of jurisdiction of the arbitrator as well as the objection on the ground of non-existence of any arbitration agreement in the so-called dispute in question, and on such an objection being raised, the arbitrator would do well in disposing of the same as a preliminary issue so that it may not be necessary to go into the entire gamut of arbitration proceedings".

Aforesaid is the position when Arbitral Tribunal is constituted at the instance of one of the parties and other party takes up the position that such proceedings are not valid in law.

What would be the position in case a suit is filed by the plaintiff and in the said suit the defendant files an application under Section 8 of the Act questioning the maintainability of the suit on the ground that parties had agreed to settle the disputes through the means of arbitration having regard to the existence of an arbitration agreement between them? "

Obviously, in such a case, the Court is to pronounce upon arbitrability or non-arbitrability of the disputes.

In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of

arbitration. The Courts have held that certain



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"30.Hence in the present dispute faced by us, the Respondent/Plaintiff had made serious allegations against the Petitioner/Defendant alleging him that he did not disclose the profit and loss of the business to the plaintiff and also did not render accounts to the plaintiff and had cheated her etc which, in the opinion of this court the suit is very much maintainable.

31.Further on perusal of Ex.R.1 it reveals that the said Arbitration Proceedings was dismissed stating that the reference of dispute to the arbitration was made after three years from the date of cause of action for reference to arbitration and as such the approach for referral to arbitration is barred under Article 137 and Section 3 of the Limitation Act 1963 and hence the claim petition filed by the Respondent/Plaintiff was terminated u/s 32(2)(c) of the Arbitration and Conciliation Amendment Act 2015.

32.From the foregoing it is clear that the claim before the Ld Arbitrator is not disposed of on merits. Further even in the order dated 20.03.2020 passed in the claim petition by the Learned Arbitrator the Learned Arbitrator has opined that "...but at the same time to arrive and to decide that whether the claimant invested capital or contributed landed properties into the business of the firm and whether the claimant is having any rights over the properties of the firm or not a judicial trial is essentially required.

33.Apart from the above it is settled law that while considering the application under Order 7 Rule 11 of CPC the court is not required to take into consideration the defence set up by the defendant in his written statement. The question whether the plaint discloses any cause of action is to be decided by looking at the plaint averments, Court need not traverse beyond the plaint averments. While considering the application under Order 7 Rule 11 CPC the strength or weakness of the plaintiff's case is not to be seen. What is required to be disclosed by the plaintiff is a clear right to sue. Where the allegations made in the plaint prima facie discloses a cause of action plaint cannot be rejected.

34.Further it is settled law that rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power, has



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therefore, to be used in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint it does not make out any case. The plaint can only be rejected where it does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by any provision of the law. While exercising the power of rejecting the plaint, the Court has to act with utmost caution. This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though rising in civil procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff, whose plaint is to be branded as an abuse of the process of the Court. This jurisdiction ought to be very sparingly exercised and only in very exceptional case. The exercise of this power would not be justified merely because the story told in the pleadings was highly improbable or which may be difficult to believe.

35. Therefore, as per the law laid down by the Apex Court, the suit in hand is not liable to be dismissed or rejected at this stage of the case. It is no doubt that the real object of O.7 R.11 CPC is to keep out of courts bogus and irresponsible law suit; however the basic question is to be decided which dealing with an application filed under O.7 R.11 CPC is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get around O.7 R.11. In the instant case the Plaintiff has clearly set out the cause of action for the relief claimed by her in the plaint paragraphs 7, 8 & 9."

22. The revision petitioner has also gave a police complaint against the respondent for trespass. The main question is that whether the respondent has also invested for the firm and the respondent is also entitled for $\frac{1}{2}$ share. The issue can be decided only by the Civil Court.

23. The learned Principal District Judge, Theni, has rightly dismissed the I.A.No.1 of 2020 in O.S.No.21 of 2017. This Court has no valid reason to interfere with the order passed by the Court below.



24.Finally, this Civil Revision Petition is dismissed by confirming the order, dated 11.02.2021 passed by the learned Principal District Judge, Theni, in I.A.No.1 of 2020 in O.S.No.21 of 2017. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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 Principal District Judge, Theni.

Copy to

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

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-32610[F] dated 26/10/2021)

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RK/JC (08/11/2021) 9P 5C