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C.R.P.(NPD) No.760 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(NPD) No.760 of 2022
& CMP No.3812 of 2022

S.Savithri Arjunan

... Petitioner

Vs.

K.Rajkumar

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 29.07.2021 made in O.S.C.F.R.No.1100 of 2020 on the file of the Subordinate Judge of Udthagamandalam, The Nilgiris.

For Petitioner : Ms.R.Gouri

ORDER

This petition is filed, praying to set aside the fair and decretal order dated 29.07.2021 made in O.S.C.F.R.No.1100 of 2020 on the file of the Subordinate Judge of Udthagamandalam, The Nilgiris.

2. The plaintiff in O.S.No.1100 of 2020 on the file of the learned



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Subordinate Judge of Udhagamandalam, has moved this Court to set aside the order of the trial Court, rejecting the plaint and it is evident that the rejection of the plaint has taken place at pre-numbering stage.

3. The revision petitioner has laid the suit for specific performance of a contract for sale of the suit property entered into by him with the defendant some time in the year 2000. The suit, however, was instituted only in the year 2020. The trial Court has taken note that under Article 54 of the Limitation Act, the suit is barred.

4. Heard the learned counsel for the revision petitioner.

5. This Court finds at least two flaws in the approach of the trial Court, viz.,

- (i) the trial Court appeared to have ignored the procedural prescription and rejected the plaint on the ground that the suit is barred by limitation. This Court in “**Selvaraj and Others Vs. Koodankulam Nuclear Power Plant India Limited and Others**”(2021(4) CTC 539: 2021-3-LW 677: 2021(3)MWN 73)



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(cited for the benefit of the learned trial Judge), has laid down elaborate guidelines for numbering the suits and returning/rejecting the plaints.

- In paragraph no.30 of the said judgment (cited supra), this Court has stated that if the Court chooses to return the plaint, it is necessary for it to post the matter in open Court and invite arguments of the counsel on the question of maintainability and pass a judicial order so that the aggrieved party could work out his remedy.

6. The power to reject the plaint and the scope of objections touching upon the maintainability of the suit at the stage of numbering requires careful delineation. Here, before rejecting the application on pre-numbering stage, the trial Court does not seem to have chosen to post the matter before the open Court. Secondly, it also ignored paragraph 26(c), which explains how to deal with the cases where the Court comes to a conclusion that a suit is barred by limitation.

7. In view of the foregoing reasons and since the rejection of the plaint at the pre-numbering stage without inviting the arguments of the learned counsel on record as regards the maintainability of the suit by



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posting the matter before the open Court, the order of the trial Court is therefore, set aside and the matter is remanded back to the trial Court and the learned trial Judge is required to post the matter before the open Court for hearing the learned counsel for the plaintiff and also apply the ratio laid down in "***Selvaraj and Others Vs. Koodankulam Nuclear Power Plant India Limited and Others***"(2021(4) CTC 539: 2021-3-LW 677: 2021(3)MWN 73) regarding return of plaint.

8. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order



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N.SESHASAYEE.J.,

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