



C.R.P(NPD)No.1749 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.05.2022
Pronounced on	09.06.2022

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

**C.R.P(NPD)No.1749 of 2022
and C.M.P.No.8810 of 2022**

M/s.Olympia Opaline Flat Owners Association
Rep. by Authorized Signatory Sakthi Kumar Subramanian,
No.33, Rajiv Gandhi Salai,
Navalur, Chennai – 600 103.

...Petitioner

Versus

R.Dinesh

...Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the return docket order dated 08.03.2019 in CNR No.TNKP010006972019 (Filing Number OS.No.227 of 2019) on the file of the Principal District Court, Chengalpattu.

For Petitioner : Mr.Nithyaesh Natraj



C.R.P(NPD)No.1749 of 2022

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ORDER

This Civil Revision Petition is taken up for final disposal at the admission stage itself. As per the decision of this Court in the case of ***P.Seyyammal vs. R.Chinnasamy*** reported in ***2009 SCC Online Mad 2187***, there is no necessity to issue notice to the respondent since the order impugned herein is a docket order returning the plaint of an unnumbered suit.

2. The relief sought by the petitioner in this petition is to set aside the return docket order dated 08.03.2019 passed by the learned Principal District Judge, Chengalpattu in CNR No.TNKP010006972019 (Filing Number OS.No.227 of 2019).

3. The brief facts of the case are as follows:

The petitioner is a Flat Owners Association consisting of 1200 and odd members. Since 29.06.2017, the respondent has been making several derogatory and defamatory remarks against the petitioner association and its



C.R.P(NPD)No.1749 of 2022

committee members by way of e-mails that have been exchanged between the parties. Aggrieved over the act of the respondent, on 25.02.2019, the petitioner has filed a defamatory suit bearing CNR No.TNKP010006972019 (Filing Number O.S.No.227 of 2019) on the file of Principal District Court, Chengalpattu, however, on account of certain defects, the plaint of the said suit was returned for compliances. So, the petitioner has complied the said defects and refiled the plaint. Thereafter, on 08.03.2019, the learned Principal District Judge, Chengalpattu has passed the following docket order in CNR No.TNKP010006972019 (Filing Number OS.No.227 of 2019):

“On perusal, this Suit involves the use of alternative of papers based material of communication and information storage to facilitate this electronic filing of documents (Information Technology Act, 2000) this Court has no jurisdiction to try this case. Return to present before proper forum. Time one month.”

Challenging the above docket order, the petitioner has filed the present Civil Revision Petition before this Court for the relief stated *supra*.

4. The learned counsel for the petitioner submitted that in the modern



day era, social mode of communication has become the order of the day whereby almost all communications are done either by e-mail, WhatsApp or SMS and seldom, the conventional mode of letter to be dispatched by post is being used.

4.1. The learned counsel further submitted that the learned Principal District Judge, Chengalpattu has overlooked that the introduction of Information Technology Act, 2000 (for brevity 'IT Act') which has led to the amendments in the Indian Evidence Act (hereinafter referred to as 'Act') to include electronic records in the definition of 'evidence' of Section 3 of the Act. Section 3 of the Act reads as follows:

“3. Interpretation-Clause:

“Evidence”. ---- “Evidence” means and includes —

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the Court;]

such documents are called documentary evidence.”



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4.2. Further, Sections 65A and 65B of the Act were introduced to make electronic evidence admissible in the Court of law. An amendment was done to Section 92 of the IT Act. The conclusion arrived by the learned Principal District Judge, Chengalpattu is something which can be answered only by Principal District Court and the docket order which is impugned herein shows the palpable jurisdictional error. The learned counsel drew the attention of this Court to the following cases:

(i) In the case of ***P.Seyyammal vs. R.Chinnasamy*** reported in **2009 SCC Online Mad 2187**, this Court has held as follows:

“6. I have given my anxious consideration on the submissions made by the learned counsel appearing on either side. As the lower Court has dismissed the E.A. filed by the petitioner without numbering the same, there is no need to issue notice to the respondents. According to me, when the petition is filed, the Court should not go into the merits of the petition and firstly the Court must number it, if the petition is otherwise in order. Only after numbering the same and after giving sufficient opportunity to the petitioners and then only the Court could decide the issue and before numbering the petition the Court should not have gone into merits of the matter and pass orders. Hence, the



order of the lower Court is set aside. The lower Court is directed to number the E.A.S.R.No.9014 of 2009 in E.P.No.428 of 2004, if it is otherwise in order, and proceed with E.P.No.428 of 2004, in accordance with law. The lower Court is directed to consider the Claim Petition (E.A.Sr.No.9014 of 2009) before passing any order in the petition filed by the decree holder for confirming the auction.”

(ii) Similarly, in the case of ***M.Masood vs. Parisal Beevi*** reported in ***2014 SCC Online Mad 6576***, this Court has held as follows:

“10. In view of the judgement reported in AIR (29) 1942 Madras 446 (cited supra) and the order dated 10.12.2009, made in C.R.P.PD.(MD)No.2059 of 2009 [P.Seyyammal v. R.Chinnasamy], it is not for the Court to decide the issue at the time of numbering the plaint. After numbering the plaint, it is open to the Court to decide the issue on merits and pass appropriate orders. Therefore, this Civil Revision Petition is allowed. The learned Principal District Munsif, Tenkasi, is directed to number the unnumbered O.S.SR.No.9938 of 2014, if it is otherwise in order and decide the suit on merits and in accordance with law. No costs.”

5. Heard the learned counsel for the petitioner and perused the



C.R.P(NPD)No.1749 of 2022

materials available on record.

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6. It can be seen from the records that the defamation suit was filed by the petitioner since the respondent has been making several derogatory and defamatory remarks against the petitioner association and its committee members. The said suit papers were returned by the Principal District Court, Chengalpattu on account of defects and the same was complied and refiled by the petitioner. The learned Principal District Judge, Chengalpattu vide docket order dated 08.03.2019 ordered to return the plaint for presentation before the proper forum by assigning a reason that the Court has no jurisdiction to try this case since the petitioner has used alternate papers based method of communication and information storage to facilitate electronic filing of documents under IT Act.

7. The learned Principal District Judge, Chengalpattu ought to have decided the merits of maintainability of the defamation suit only after numbering the same. When a suit is filed, the Court should not go into the



C.R.P(NPD)No.1749 of 2022

merits of it and firstly, the Court must number the suit, if it is otherwise in order.

8. Since this Civil Revision Petition has been filed against the return of unnumbered suit, there is no need to issue notice to the respondent.

9. Only after numbering the suit and after giving sufficient opportunity to the plaintiff, the Court could decide the issue on hand. Hence, the docket order dated 08.03.2019 passed by the learned Principal District Judge, Chengalpattu is unsustainable in law.

10. It is a settled law that any suit cannot be rejected on account of maintainability. Registry does not have any power to reject the suit on maintainability. In this regard, the learned counsel for the petitioner has rightly relied on the two decisions of this Court, namely,

(i) *P.Seyyammal vs. R.Chinnasamy* reported in *2009 SCC Online Mad 2187*

(ii) *M.Masood vs. Parisal Beevi* reported in *2014 SCC Online Mad*



C.R.P(NPD)No.1749 of 2022

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11. Considering the facts and circumstances of the case and also, the ratio laid down by this Court in the decisions cited *supra*, I am inclined to allow this Civil Revision Petition and set aside the docket order dated 08.03.2019 passed by the learned Principal District Judge, Chengalpattu.

12. Accordingly, this Civil Revision Petition is allowed and the docket order dated 08.03.2019 passed by the learned Principal District Judge, Chengalpattu in CNR No.TNKP010006972019 (Filing Number O.S.No.227 of 2019) is hereby set aside. Considering the fact that the suit filed in CNR No.TNKP010006972019 (Filing Number O.S.No.227 of 2019) has not yet been numbered, the learned Principal District Judge, Chengalpattu is directed to number the same, as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

09.06.2022

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Note: Registry is directed to return the original plaint to the learned counsel for the petitioner.

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C.R.P(NPD)No.1749 of 2022

Index : Yes/No

Speaking Order (or) Non-Speaking Order

J.SATHYA NARAYANA PRASAD, J.

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To

Principal District Court,
Chengalpattu.

C.R.P(NPD)No.1749 of 2022

09.06.2022