



CRP(NPD)No.3043 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**CRP(NPD)No.3043 of 2021 and**  
**CMP.No.21496 of 2021**

1.Tecknoweld Alloys (India) Private Limited,  
Registered Office No.114,  
Developed Plots, Industrial Estate,  
Perungudi, Chennai-600 096.

Works: B37, Sipcot Industrial Growth Centre,  
Oragadam, Sriperumbudur,  
Kanchipuram-602 105.  
Rep. by its Director.

2.Tecknoweld Alloys (Overseas) Private Limited,  
Registered Office & Works:  
No.114, Developed Plots, Industrial Estate,  
Perungudi, Chennai-600 096.  
Rep. by its Director

... Petitioners

Vs

1.R.Saravanan

2.The Controlling Authority,  
Under The Payment of Gratuity Act,  
The Deputy Commissioner of Labour-2,  
Tamil Nadu Labour Welfare Building,  
DMS Campus, Teynampet.

... Respondents



CRP(NPD)No.3043 of 2021

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the learned Second District and Sessions Judge, Kancheepuram dated 13.09.2021 in un-numbered O.S.SR.No.10288 of 2019 and number the suit.

For Petitioners :Mr.P.Raghunathan  
for M/s.T.S.Gopalan and Co.

### **ORDER**

The petitioners challenge the order of rejection of the plaint filed by them without numbering. The suit was filed by the petitioners seeking recovery of a sum of Rs.14,63,219.22/- which comprises of a sum of Rs.10,05,637.98/- due to the first plaintiff and a sum of Rs.4,57,652.24/- due to the second plaintiff drawn as travelling allowance by the defendant when he was a Chief Executive Officer of the plaintiff company.

2.The second prayer in the suit is for a declaration that the first defendant is not entitled to claim gratuity as long as he pays the amount claimed in the suit.

3.The learned Additional District Judge, Kancheepuram did not number the plaint for a very long time which forced the plaintiffs to approach



CRP(NPD)No.3043 of 2021

this Court in CRP.No.1697 of 2021. This Court disposed of the CRP on 23.08.2012 wherein this Court observed that there could be no difficulty for the plaintiff to claim the first prayer as regards the second prayer, this Court directed the trial Court to decide the matter and to either reject the plaint or number the plaint.

4.Pursuant to the said order, the learned Additional District Judge, Kancheepuram rejected the plaint holding that the first prayer is barred by limitation and the second prayer is prohibited under law in as much as Section 60 of the Code of Civil Procedure bars attachment of the gratuity.

5.Mr.P.Raghunathan, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in rejecting the plaint of the threshold. As far as the first prayer is concerned, it is a prayer for recovery of money. There are sufficient allegations in the plaint to show that the suit claim is not ex-facie barred by time. A plaint can be rejected on the ground of limitation only if it is shown that the plaint claim is ex-facie barred by limitation and not otherwise since limitation has always been held to be a mixed question of fact and law. Therefore, the rejection of the plaint regarding the first prayer is only unsustainable, according to Mr.Raghunathan.



CRP(NPD)No.3043 of 2021

6.As regards the second prayer, the learned counsel would submit that the plaintiff is not seeking an attachment, all that is sought for is a restriction on the defendant from withdrawing the gratuity amount or claiming the gratuity amount since he owes the plaintiff for certain amount. Mr.Raghunathan would also invite my attention to the judgment of the Delhi High Court in *State Farm Corporation of India Limited vs. Regional Labour Commissioner and another* reported in 2007 (3) L.L.N. 854, wherein the Delhi High Court has recognized the right of an employer to recover the dues from the gratuity amount. He would also draw my attention to the judgment of this Court in *M.Azeez vs. Indian Bank* reported in 2012 SCC Online Mad 1490, wherein the Hon'ble Justice K.Chandru had recognized the right of the employer to retain the gratuity till such time the criminal proceedings are complete. Useful reference could also be made, according to Mr.Raghunathan, to the judgment of the Hon'ble Supreme Court in *Chairman-Cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey* reported in 2020 SCC Online SC 470. A perusal of these judgments would definitely indicate that an employer has a right to retain the gratuity till such time the legal dues are recovered.



CRP(NPD)No.3043 of 2021

7.I have considered the submissions of the learned counsel for the petitioners.

8.As far as the prayer for recovery of money is concerned, I can straight away point out that the learned Additional District Judge erred in rejecting the suit on the ground that it is barred by limitation. At the time of numbering of the plaint, the Court shall not wear the hat of the defendant. This Court had in ***Selvaraj and others vs. Koodankulam Nuclear Power Plant India Limited Represented through its Project Director, Koodankulam, Ramanathapuram Taluk, Tirunelveli District and others reported in 2021 (4) CTC 530*** laid down specific guidelines regarding the power of the Court while deciding on return of plaints before numbering. Apparently, the learned District Judge has over looked the said judgment of this Court. The Court has not expected to test the case of the plaintiff by assuming defences that are available to the defendant. This is exactly what has been done by the learned Additional District Judge while deciding on the question of maintainability. Even on the second question regarding the right of an employee to retain the gratuity amount, this Court, the Delhi High Court and the Hon'ble Supreme Court have pointed out that such power is available



CRP(NPD)No.3043 of 2021

to an employer. Therefore, I have no hesitation in concluding that the learned

District Judge was not right in rejecting the plaint.

9.This Civil Revision Petition is allowed. The order of the II Additional District and Sessions Judge, Kancheepuram rejecting the plaint is set aside. The II Additional District and Sessions Judge, Kancheepuram is directed to number the suit and proceed in accordance with law. The II Additional District and Sessions Judge, Kancheepuram is directed to number the plaint forthwith and consider the Interlocutory Application as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

**25.01.2022**

vs

Index: No

Speaking order

To:

1.The Second District and Sessions Judge,  
Kancheepuram.

2.The Section Officer,  
VR Section,  
Madras High Court, Chennai.



WEB COPY



CRP(NPD)No.3043 of 2021

**R.SUBRAMANIAN, J.**

VS

**CRP(NPD)No.3043 of 2021**  
**and**  
**CMP.No.21496 of 2021**

**25.01.2022**