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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.Nos.1093 & 1094 of 2017
and C.M.P.Nos.5239 & 5240 of 2017

Cosmos 'V' Build Private Limited
Rep.by its Managing Director, A.Louis Daniel
No.22, 2nd Avenue, Indira Nagar, Adyar,
Chennai – 600 020 ... Petitioner (in both CRPs)

Vs

1.M.Manimegalai
2.P.Govindarasu
3.G.Kalaikumar
4.N.Vijayakumar
5.The Mannargudi Municipality,
Rep.by its Executive Authority,
The Commissioner,
Mannargudi Municipality,
Mannargudi. ... Respondents in CRP PD No.1093 of 2017

1.N.Vijaykumar
2.P.Govindarasu
3.G.Kalaikumar
4.M.Manimegalai
5.The Mannargudi Municipality,
Rep.by its Executive Authority,
The Commissioner,
Mannargudi Municipality,
Mannargudi. ... Respondents in CRP PD No.1094 of 2017

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders passed in I.A.No.24 of 2015 and I.A.No.174 of 2016 in O.S.No.25 of 2013 dated 23.12.2016.



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For Petitioner	..	Mr.A.Muthukumar (in both CRPs)
For R3	..	Mr.R.Umasuthan (in both CRPs)
For R1, R2 & R4	..	No appearance

COMMON ORDER

The plaintiff in O.S.No.25 of 2013 now pending on the file of the Principal District Court, Thiruvarur, is the revision petitioner in both the Civil Revision Petitions.

2.The Civil Revision Petitions have arisen out of very strange circumstances. They do not touch on the issues raised in the plaint or on the issues raised in written statement, but on surrounding circumstances. They arose, because suit summons which had been issued to D3 and D4 had been returned by the bailiff with an endorsement that the aforementioned defendants were not in the country and were actually in America for the past six months. Thereafter, they were set ex-parte.

3. Thereafter, D4 filed I.A.No.24 of 2015 under Order IX Rule 7 CPC. D3 also filed a similar application under Order IX Rule 7 CPC in

<https://www.mhc.tn.gov.in/> I.A.No.174 of 2016. Both these applications were allowed by two



separate orders, but both dated 23.12.2016, necessitating the filing of the present two Civil Revision Petitions. CRP NPD No.1093 of 2017 had been filed questioning the order in I.A.No.24 of 2015 / filed by D4. CRP NPD No.1094 of 2017 had been filed questioning the order in I.A.No.174 of 2016 / filed by D3.

4. In the counter filed in I.A.No.174 of 2016, the revision petitioner / plaintiff took a very specific stand stating that the signature of D3 in the vakalat, affidavit and in the written statement are forged and that D3 had not appended those signatures. It was pointed out by the revision petitioner in his counter that the bailiff had himself noted that D3 was in America for the past six months and therefore, he could never have signed in India, the entire records like vakalat, affidavit and written statement. With respect to the petition in IA.No.24 of 2015 a similar stand was taken.

5. With respect to this specific contention, the learned Principal District Judge was of the opinion of that the fact whether D3 was abroad or not is an issue which has to be established only by the revision petitioner / plaintiff.

6. It is contended by Mr.A.Muthukumar, learned counsel for the petitioner that calling upon the revision petitioner to prove a negative



would be an impossible task to perform, because whether D3 had gone abroad or not is a fact, which is to his exclusive knowledge and can be spoken to only by D3 who has that particular knowledge and quite apart from that knowledge, the only document, which can effectively establish, whether he had gone aboard or not is his own passport and the Court could very well have called upon D3 to produce his passport to determine that fact.

7. As a matter of fact, if a document is called upon to be produced and is not produced, then under Section 114(g) of the Evidence Act, adverse inference can always be taken by the Court. Therefore, when the best evidence, normally passport, is in possession of D3 and the knowledge whether he had gone abroad or not is to the exclusive knowledge of D3, shifting the burden to the plaintiff, according to Mr.A.Muthukumar, was unjustified and therefore, learned counsel insisted that the order under revision requires to be interfered with by this Court.

8. Mr.R.Umasudhan, learned counsel appearing for R3/D2, informed the Court that D2 had expired. Let me not hold up passing orders in the revision petitions owing to that particular fact.



9. It is also informed that PW-1 had let in evidence and had filed his proof affidavit and he had been cross-examined in part. It is also informed that the plaint had been amended and to that particular amended plaint, additional written statement will have to be filed.

10. Let me now examine the counter filed. In that particular counter, the petitioner herein / plaintiff had very specifically stated that the signatures of D3 in the vakalat, affidavit and in the written statement are forged. When that is brought to the knowledge of the Court, the Court should have examined that allegation, and determine whether such an allegation is correct or not. The Court should focus its attention on that particular fact.

11. In *1994 1 SCC 1, S.P.Chengalvaraya Naidu v. Jagannath and others*, the Hon'ble Supreme Court had very clearly stated that fraud goes to the root of any case and allegation of the fraud is an aspect which will have to be examined by Court.

12. In this particular case, though the frame of the suit is the allegation against D1 and D2 and their transactions with other



defendants, still since written statement had been filed in Court and since it is alleged that the signature of D3 is forged, I would grant the liberty to the plaintiff to introduce this as a fact in the pleading in the plaint itself by filing an amendment to the plaint or by filing a reply statement to the written statement with leave of the Court.

13. I am aware that Order VI Rule 17 CPC, an embargo is placed that amendment should not be granted except in extreme circumstances, after trial had commenced. But when there is an allegation of fraud, it would only be proper that the Court examines it and even if there is slight whisper of such allegation, a burden is caused on the Court to examine it with a microscope.

14. Therefore I would grant an opportunity, to raise this particular allegation, which had been raised in the counter to the interlocutory application filed by D3 as part of the pleadings and let a written statement be filed answering all such allegations by D3 and D4 and thereafter, let issues be framed. If it is a fact that the signatures are forged, then it would directly on the sanctity of the entire judicial proceedings. There would be no point in examining other issues raised in



the plaint when documents presented in the Court are found to be forged.

Therefore, this is an issue which has to be examined by the learned Principal District Judge, Tiruppur.

15. Both the Civil Revision Petitions are disposed of with the following directions:

(i) The plaintiff is permitted, if he is so advised to file necessary application to amend the plaint or to file reply statement with leave of the Court, to introduce the issue of forgery of signature, particularly in the written statement and in the vakalat of D3 and D4, if required.

(ii) Permission is granted to D3 & D4 to file additional written statement, if advised, to counter these allegations, if raised by the plaintiff.

(iii) Necessary issue on this particular aspect to be framed by the learned Trial Judge and the said issue to be answered during the course of trial.

16. With the above observations and directions, both the Civil Revision Petitioners are disposed of. I am aware that the aforementioned procedure would take time and the parties would also have to apply their mind, and therefore, let me be a little indulgent, but direct the learned



Principal District Judge, Thiruvarur to dispose O.S.No.25 of 2013 on or before 31.08.2022. That time can get extended, if any revision or any other auxiliary proceedings are initiated by the parties. No order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

11.02.2022

Internet:Yes/No

Index:Yes/No

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To

The Principal District Court, Thiruvarur.



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C.V.KARTHIKEYAN, J.

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