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CRP NPD No. 2326 of 201



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 06.12.2021

Order Pronounced on: 24.01.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P.(PD) No.2326 of 2017

C.M.Kamaraj

.. Petitioner

Versus

1.Subbaiyan
2.The Editor,
Dhinamalar News Daily,
Coimbatore Press,
Coimbatore.

....Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.12.2016 made in I.A.No.102 of 2016 in O.S.No.234 of 2011 on the file of the Sub Court, Pollachi and allow this civil revision petition.

For Petitioner	:	Mr.D.R.Arun Kumar
For R1	:	Mr.M.Purushothaman
For R2	:	Mr.S.Elambarathi

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 21.12.2016 passed in I.A.No.102 of 2016 in O.S.No.234 of 2011



on the file of the Sub Court, Pollachi.

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2.The facts of the case, in a nutshell, is that the petitioner filed a defamation suit in O.S.No.234 of 2011 claiming compensation of Rs.2,00,000/- from the first defendant/first respondent for making a false and derogatory statements against the petitioner who is highly respectable person in that locality and he has a major role for the development of Pollachi. According to the revision petitioner the first respondent is not engaged with proper profession or business for ekeing the livelihood of his family. He is popularly known as “Petition Subbaiyan” who has the practice of filing false and frivoulous petitions against the big shots and industrialist for the purpose of extracting the money from them. The first respondent initially filed a frivolous petition against the petitioner to the Anti Land Grabbing Cell, Coimbatore stating that the petitioner has grabbed the Government poramboke land for his resort's use. But on enquiry the complaint was closed as there was no case as projected by the first respondent. The first respondent who is well aware of the above said facts have subsequently used the second respondent News Daily as a tool for his illegal act by publishing the false news about plaintiff's resort on 04.09.2011 and 05.09.2011. It is submitted by the Revision Petitioner that only at the stage of enquiry, the petitioner herein came to know



that the second respondent herein is proper and necessary party to the said suit. Hence, at that stage, the application was filed to implead the proposed party. Therefore, the said delay is neither willfull nor wanton. But the Trial Court erred in holding that the application is barred by limitation without construing the provision of Order 1 Rule 10 CPC. Therefore, the revision petitioner has filed the present Civil Revision Petition as against the order passed in I.A.No.102 of 2016 dated 21.12.2016.

3.Heard the learned counsel for the petitioner and respondents.

4. The learned counsel for the petitioner would submit that the original suit in O.S.No.234 of 2011 was filed claiming a sum of Rs.2,00,000/- as damages from the first respondent herein. It is submitted that the petitioner herein filed I.A.No.102 of 2016 under Order (1) Rule 10 to implead the proposed party the Editor, Dhinamalar News Daily, Coimbatore Press, since the proposed party is also having the equal liability for publishing false news about the petitioner. It is further submitted that the Trial Court without considering the merit of the petition erroneously dismissed the same on the ground that the petition is barred by Limitation under Article 75 of the Limitation Act.



5. The learned counsel for the petitioner would submit that even in the cause of action in the original plaint the petitioner herein has stated about the attitude of the second respondent and submitted that the Trial Court ought to have allowed the impleading petition filed by the petitioner. The learned counsel for the petitioner also would submit that the petitioner is entitled to file impleading petition even after the post trial. The learned counsel for the petitioner would point out section 21 of the Limitation Act submitted that the trial Court ought to have allowed the petition. Section 21 of the Limitation Act reads as follows:

“21. Effect of substituting or adding new plaintiff or defendant-(1) where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

6. Per contra, the learned counsel for the first respondent would contend that the Trial Court has rightly dismissed the petition on the ground of belated filing of the petition. It is further contended that the Original Suit in O.S.No.234 of 2011 was filed on 29.01.2011 and the



written statement by the first respondent was filed as early as on 21.06.2011 itself. It is contended that in para 8 of the written statement the first respondent has specifically and categorically stated that the non adding of Dinamalar newspaper as a party to the proceedings is fatal and in the entire pleading it has not been stated that as if this respondent has issued the alleged publication in Dinamalar paper, so, in the absence of such pleading the plaintiff claim has totally failed. The learned counsel would contend that even after filing of the written statement, as early as on 21.06.2011 the petitioner herein has not taken any steps immediately and only on 06.06.2015 this petition to implead the proposed respondent has been filed which was rightly dismissed by the learned Trial Court and no interference is called for by this Court. In support of his contentions, the learned counsel would also rely on the ruling reported in 1992 2 SCC 524.

7.The learned counsel for the respondent would further submit even as per the proviso clause Section 21, only when the Court is satisfied that omission to include a new plaintiff or defendant was, due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date, but whereas in the present case, though this respondent had stated in his written statement that the non adding of the proposed party to proceedings



is fatal as early as on 21.06.2011, the petitioner herein has not taken any steps immediately to implead the proposed party and the same was rightly dismissed by the Trial Court.

8.The learned counsel for the respondent would also contend that the impleading a new party after examination of P.W.1 and P.W.2 would change the total cause of action and admittedly there is no cause of action against the proposed party in the pleadings and the trial Court having considered all the aspects rightly dismissed the petition which needs no interference by this Court.

9.Admittedly the suit was filed on 29.01.2011. The written statement was filed on 21.06.2011. But this petition to implead the proposed party was filed on 06.06.2015 after 4 years only. In the cause of action paragraph the petitioner has mentioned about the defamatory news published against him on 04.09.2011 and 05.09.2011. Article 75 of the Limitation Act provides that a suit for compensation for libel has to be filed within a year from the date of publication of the libel. But the petitioner has filed impleading petition only in the year 2015 which is hit by Article 75 of the Limitation Act. The Trial Court has also discussed the same and rightly dismissed the petition.



10. In view of the above discussion, this court has no hesitation to conclude that there is no irregularity or infirmity in the order passed by the trial court. Accordingly, this Civil Revision Petition is dismissed. No costs.

24.01.2022

Index : Yes / No

Internet : Yes / No

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To

The Sub Court, Pollachi.



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S.KANNAMMAL, J

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Pre-delivery order in
CRP (PD) No.2326 of 2017

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