



C.R.P.(P.D).No.3638 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.(P.D) No. 3638 of 2022

Velliangiri

Vs.

...Petitioner

- 1.A.Subramani
- 2.Radhakrishnan
- 3.RAvi
- 4.C.Anandhan
- 5.Prabhavathi
6. P.Thirupathi
7. K.Thirupathi
8. Udhayakumar
9. B.C.Mohanraj
10. G.Srinivasan
11. Shanthi
12. Padmanathan
13. K.K.Raja
14. S.Senthilkumar
15. S.G.Sridhar
16. V.Rajendran
17. Raman
18. K.R.Gopi
19. Sabirudhin
20. G.Selvi
21. Haribabu
22. Dinesh
23. Indira
24. Rajasekar

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25. Senthilkumar
26. C.Murugan
27. Balashanmugam
28. V.Valar
29. Shanthi
30. Panbu
31. B.Senthilkumar
32. Usha
33. A.Senthil
34. Vino Bajji
35. Ramesh
36. R.Susila
37. Kalpana
38. K.Thambiraj
39. Giridharan
40. Nagarajan
41. Alamelu
42. C.Ponuvel
43. Thenmozhi
44. Devarajan
45. Thamaraiselvi
46. M.Veerabathiran
47. Sirajithin
48. Jegadesan
49. Rajesh
50. Balaji
51. M.Chandhiran
52. Sathish
53. Sathya
54. Shanthi
55. Sunilkumar
56. Nagaesh
57. Sekar
58. Iqbal
59. Rukumai
60. Saranya

...Respondents



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Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 08.08.2022 passed by the Trial Court in Unnumbered IP.No. of 2022 in CFR.No. 3744 of 2022 on the file of the Principal Subordinate Court, Krishnagiri, and consequently direct the registry of the Principal Subordinate Court, Krishnagiri, to number the petition in IP.No. of 2022 in CFR.No.3744 of 2022 on the file of the Principal Subordinate Court, Krishnagiri.

For Petitioner : Mr.C.Jagadish

ORDER

The Civil Revision Petition has been instituted to set aside the order dated 08.08.2022, passed in un-numbered IP of 2022, in CFR no.3744 of 2022.

2. The revision petitioner filed an Insolvency Petition on the file of the Principal Subordinate Court, Krishnagiri. The grievance of the writ petitioner is that even before numbering the Insolvency Petition and without affording opportunity to the writ petitioner to establish his insolvency status, the Principal Subordinate Court rejected the Insolvency Petition which was un-numbered. The learned counsel for the petitioner relied on the judgement of this Court in the case of *Selvaraj Vs. Koodankulam Nuclear Power Plant*



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India Ltd. reported in (2021) 4 CTC 539, wherein the principles to deal with the Insolvency Petitions were considered in paragraph 53, which reads as under:

“53. Now, to facilitate the process of scrutiny of plaint at the preliminary, preregistration stage in the manner herein above stated, this Court tabulate the same below:

Heads	Permissible during scrutiny of plaint	Not permissible
Cause title and form of pleading (Order VI Rule 3)	Yes. Can be verified if there is a substantial compliance of Appendix A.	
Parties to suit Order VII Rule 1 (a) to (b) and Rule 4	Yes. Required to the extent required, and if the suit is laid in a representative capacity.	
Maintainability (cause of action) Sec.9 & Order VII Rule 1(e)	Yes. Only to the extent of ascertaining if the plaintiff has a legally recognised enforceable right on plain reading of the plaint, and no more.	Ø Sufficiency or adequacy of pleading cannot be gone into. Hence grounds of fraud as in Order or VI Rule 4 CPC cannot be insisted. Ø Proof of any of the allegations in the plaint should not be sought. Ø Merits of the matter or correctness of the pleadings cannot be gone into.
Maintainability (Jurisdiction) Sec.9 CPC	Ø If the inherent jurisdiction of the Court is barred in granting the relief sought by any statute. Ø Caution must be exercised before returning a plaint.	



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Heads	Permissible during scrutiny of plaint	Not permissible
	The entire plaint, the cause of action and the relief sought must be understood as are stated or disclosed in the plaint alone need to be considered. ØThe statutory provision barring the institution of the civil suit or excluding the civil court's inherent jurisdiction to take cognizance of the civil dispute must be strictly understood.	
Maintainability (Limitation)	Yes. Where a suit is ex facie barred by limitation. Only the allegation in the plaint should be the basis. However, the where plaintiff pleads exemption from the law of limitation under Order VII Rule 6, this should be left to be tested post registration of the suit at the appropriate stage.	Newer or clarificatory material or proof of any fact pertaining to limitation should not be insisted.
Maintainability Territorial and Pecuniary jurisdiction Order Sec. 15 to 21 r/w Order VII Rule 1(f)	Yes.	
Money suits Order VII Rule 2	If precise amount is stated	
		However, sufficiency of the description cannot be gone into.
Description of Property Order VII Rule 3	Yes	Again, if there is any variance of extent or boundary description with



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Heads	Permissible during scrutiny of plaint	Not permissible
		any title deed, even that may be formally notified for a possible typographical or clerical mistake, but if any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.
Relief Order VII Rule 7 and 8	Yes, but limited to ascertaining if a relief at all is sought	Appropriateness or suitability of the relief sought cannot be gone into. This is not Court's job. Seeking the relief is the prerogative of the plaintiff. The fact that the Court may not grant it ultimately is a matter for adjudication, and is part of its judicial act and not part of its ministerial act of numbering the plaint. [See AIR 1942 Mad 446]
Valuation and court fee	Yes. But the basis for the the valuation must be as stated by the plaintiff. If any objection as to valuation must be done, then the defendant can always raise it during the first hearing under Sec. 12(2) of the Tamil Nadu Court Fee & Suit Valuation Act, 1955.	Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.
Documents	If enclosed can be verified with the list provided in the	Production of the documents cannot be insisted.



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Heads	Permissible during scrutiny of plaint	Not permissible
	plaint the possibility of laying a suit 24 x 7. No law compels any person to possess all the documents all the time either. A cause of action for the suit invariably arises at a time convenient to the defendant, but it is the plaintiff who has to	It needs to be realised that, given the level of poverty and illiteracy in this country it cannot be expected that every one will possess all the documents all the time, anticipating approach the Court to protect his/her right. All that the plaintiff therefore needs is only a cause of action and not proof of it when he enters the court-system.
Documents		This apart After all under Order VII Rule 14(3) CPC documents, including title documents can be produced subsequently. Production of documents may be relevant for considering the granting of interim relief, but is not mandatory for numbering the suit.
Signing the plaint Order VI Rule 14	Yes	
Verification of plaint Order VI Rule 15	Yes	
	1. Copy of plaint and affidavit 2. Vakalath. 3. Any application for leave to sue 4. Process along with	
Accompanying papers	copies of plaint. (Plaint cannot be returned for not providing it since under	



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Heads	Permissible during scrutiny of plaint	Not permissible
	Order VII Rule 9, they have to be provided only after the suit is numbered and the Court orders summons to the defendant) 5. Any other applications with affidavit	
Others	Any formal typographical or clerical error apparent on the face. Any doubt as to pecuniary or territorial jurisdiction. This is consistent with Order VII Rule 1(a) CPC	

3. This Court is of the considered opinion that an opportunity is to be afforded to the person who is filing an Insolvency Petition. Only when a petition is numbered, the petitioner will be in a position to establish his insolvency status. If the Insolvency Petition is dismissed even without numbering, then there is no scope for any further adjudication, even with reference to the creditors or debtors, who have been involved in the Insolvency Petition. Therefore, issues have to be decided on merits only after numbering the Insolvency Petition and affording an opportunity to the petitioner who has chosen to file the Insolvency Petition under the provisions of the Act.



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4. In the present case, the Trial Court dismissed the petition even before numbering it, which is not in consonance with the established principles. Thus, this Court is inclined to quash the order dated 08.08.2022, passed in un-numbered IP of 2022, in CFR No.3742 of 2022, and the Trial Court is directed to number the Insolvency Petition and afford an opportunity to the petitioner to establish his insolvency status and thereafter, decide the issues on merits and in accordance with the law.

5. With the above directions, the Civil Revision Petition stands **allowed**. However, there shall be no order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

1. Principal Subordinate Court,
Krishnagiri



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S.M.SUBRAMANIAM.J.,

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