



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP.NO.3161 OF 2017

AND

CMP.NO.14819 OF 2017

1.S.V.Ramachandran
2.V.R.Jayasingh
3.V.R.Jayakumaran

... Petitioners/Defendants

Vs.

Syndicate Bank, Overseas Branch,
rep. By its Senior Branch Manager,
No.245, R.K.Mutt Road,
Mylapore, Chennai - 600 004.

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair & decreetal order passed in I.A.No.471 of 2016 in O.S.No.7656 of 2012 on the file of the XVIII-Assistant City Civil Court, Chennai.

For Petitioners : Mr.J.J.Jaseem Mohammed

For Respondent : No Appearance

O R D E R

Heard the learned counsel for the petitioners.

2.Let me not hold over the revision petition any further even though there is no representation on behalf of the respondent. The matter had come up before me at least two earlier occasions but unfortunately, there was no representation on behalf of the respondent.

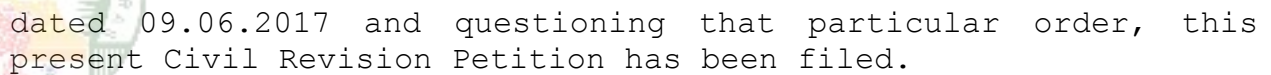
3.The revision petition has been filed against the order dated 09.06.2017 by the XVIII-Assistant Judge, City Civil Court, Chennai in I.A.No.471 of 2016 in O.S.No.7656 of 2012.



4.The defendants in the said suit are the revision petitioners herein. The said suit in O.S.No.7656 of 2012 had been filed by the respondent / Syndicate Bank, seeking recovery of a sum of Rs.2,06,690/- together with interest and costs. It was stated that the petitioners herein / defendants had put up a claim that they are having a running account with the respondent / Bank and that the rents for the portion occupied by the Bank, was received by the petitioners herein. It had been stated that a counter claim therefore lies by the petitioner against the respondent / plaintiff to a sum of Rs.77,400/- seeking set off and also seeking a further claim of Rs.3,62,749/-. An additional written statement had been filed by the petitioners herein. That came to be rejected by the order dated 09.06.2017, necessitating filing of the present Civil Revision Petition.

5.A brief examination of the facts would reveal that the respondent / Syndicate Bank, had instituted the suit seeking recovery of a sum of Rs.2,06,690/- together with interest at 18% p.a., on Rs.1,79,730/- and also for costs and the costs. Such claim had arisen owing to a registered lease deed that had been executed on 16.03.2001 with respect to a property measuring 1,720 Sq.ft., in the ground floor of the building at No.12, Smith Road, Anna Salai, Chennai-600002. The lease deed had been entered into by the erstwhile owners of the property with the Bank. It was originally for a period of 10 years. Advance amount had also been given. Thereafter, the present revision petitioners had purchased the property from the erstwhile owners by a sale deed dated 27.08.2003. Attornment of tenancy was sought. The present petitioners also sent a letter on 01.10.2003 to the respondent / plaintiff seeking attornment of tenancy and directing the respondent / plaintiff to send the monthly rents and the amounts towards the amenities from September 2003 to them. It had been stated that on 31.03.2011, the lease deed came to an end by efflux of time. An advance of Rs.2,70,000/- had been given at the time of the lease and refund of the same had been sought in the suit after adjustment of the rents.

6.The petitioners herein had filed a written statement. Issues had been framed. The parties had been invited to grace the witness box. Accordingly, on the side of the respondent / plaintiff, P.W.1 had been examined in chief and I am informed that he has also been cross-examined. At that particular stage, the revision petitioners / defendants had filed an application under Order 8 Rule 6-A C.P.C., seeking permission to file a counter claim. Necessary Court fees had also been filed. That application in I.A.No.471 of 2016 had been dismissed by an order



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9. The provisions in Order 8 Rule 6-D of C.P.C., indicate that even if the suit is dismissed that is, even if the Bank were not to proceed with the suit, the revision petitioners would have a right to proceed with the counter claim as if it is a plaint. Therefore, it is only appropriate that all issues between the parties are settled in one common suit and parties are not driven to separate proceedings or multiplicity of proceedings in different forums. Consistency in the nature of adjudication will also be possible if the plaint and the counter claim are decided together.

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11.Mr.J.J.Jaseem Mohammed, learned counsel for the revision petitioners had placed on record the judgment of the Hon'ble Supreme Court in Smt.Shanti Rani Das Dewanjee Vs. Dinesh Chandra (Dead) By LRS dated 18.09.2017 reported in AIR 1997 SC 3985 wherein, the Hon'ble Supreme Court had examined the issue of limitation with respect to an application filed under Order 8 Rule 6-A C.P.C. It had been observed that if the said application is ex-facie not barred, then the application should be allowed and opportunity should be granted to press the issues raised in the counter claim and to be decided in manner known to law. The manner known to law would imply that opportunity will have to be given to the parties to let in oral and documentary evidence and for that oral and documentary evidence to be tested during the course of trial and cross-examination.

12.Taking that particular view and also in view of the dictum laid down by the Hon'ble Supreme Court, this revision petition is allowed. A direction is issued as aforesaid to the XVIII-Assistant City Civil Judge, Chennai to continue hearing O.S.No.7656 of 2012 but give opportunity to file the counter claim, to file a reply to the same, to recast the issues if required including on limitation, to re-examine P.W.1 in chief and thereafter, proceed further with cross-examination of P.W.1 and with further procedure in the suit.

13.With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To:-

1. The XVIII Assistant Judge,
City Civil Court, Chennai.
2. The Senior Branch Manager,
Syndicate Bank, Overseas Branch,
No.245, R.K.Mutt Road,
Mylapore, Chennai - 600 004.

CRP.No.3161 of 2017
and

CMP.No.14819 of 2017

NR(CO)

RLP(09/05/2022)