



C.R.P.No.4189 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

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

C.R.P.No.4189 of 2022

and

C.M.P.No.21915 of 2022

J.Kamsala

... Petitioner/Petitioner/Defendant

Vs.

Government of Tamil Nadum
Highways Department,
Rep.by Divisional Engineer (H),
C&M Kallakurichi.

... Respondent/Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.09.2022 made in I.A.No.125 of 2021 in O.S.No.6 of 2020 in the file of the III Additional District Judge, Villupuram at Kallakurichi and consequently allow the petition made in I.A.No.25 of 2021 in O.S.No.6 of 2020.

For Petitioner : Mr.C.Ramesh



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ORDER

The Civil Revision Petition has been filed challenging the fair and decretal order dated 15.09.2022, passed in I.A. No.125 of 2021, in O.S. No.6 of 2020.

2.The revision petitioner is the defendant in the suit instituted by the respondent herein. The suit was instituted by the respondent for the recovery of money and during the pendency of the suit, the revision petitioner/defendant filed an Interlocutory Application in I.A. No.125 of 2021 for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure.

3.The learned counsel for the revision petitioner mainly contended that the suit is barred by limitation and more so, there is no cause of action for the purpose of institution of the suit on the file of the Additional District Court at Kallakurichi. There is no cause of action arose at Kallakurichi, and thus, the institution of the suit at Kallakurichi is not maintainable.



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4. With reference to the above grounds, the findings of the Trial

Court are that the revision petitioner was a successful bidder and tenderer and two works were awarded to her. With reference to the said contract, a Writ Petition was filed in W.P.No.38130 of 2004, and the said Writ Petition was disposed of by the High Court on 27.02.2019, granting liberty to the respondent herein to pursue their remedy. Based on the liberty granted by the High Court, the respondent instituted the suit for the recovery of money. Thus, the suit is not hit by the law of limitation.

5. Regarding the abuse of process, the Trial Court found that the contract and all such required proceedings were sanctioned by the competent authorities of the Government for further adjudication in the suit. The cause of action in the plaint was considered by the Trial Court with reference to the averments in the plaint as a whole.

6. While deciding the application under Order VII Rule 11 of Code of Civil Procedure, the Courts are bound to consider the plaint as a whole and not the cause of action indicated in the plaint. Even in a barred cause of



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action, the plaint cannot be rejected.

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7. In the present case, the revision petitioner was a successful bidder, awarded certain works by the respondent, and a dispute arose and the writ petition filed before the High Court was disposed of with the liberty to the Government to institute appropriate proceedings and consequentially the respondent herein filed a Civil Suit for the recovery of money. Thus, the said proceedings cannot be termed as an abuse of process.

8. Even if the revision petitioner is of an opinion that the respondent is not entitled to the relief as such sought in the suit, the issues raised are triable and thus, the Trial Court has to adjudicate the issue with reference to the documents and evidence. Thus, the revision petitioner is at liberty to establish his case before the Trial Court at the time of conducting the trial and this Court does not find any prima facie case for the purpose of entertaining the revision petition rejecting the Interlocutory application, filed under Order VII Rule 11 of Code of Civil Procedure



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9. Accordingly, the Civil Revision Petition stands **dismissed**.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes

Internet: Yes

Speaking Order

To

1. III Additional District Judge, Villupuram,
Kallakurichi
2. Government of Tamil Nadum
Highways Department,
Rep.by Divisional Engineer (H),
C&M Kallakurichi.



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S.M.SUBRAMANIAM.J.,

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