



C.R.P. No. 705 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 705 of 2017
and
C.M.P. No. 3553 of 2017

C.R.Satyanarayanan,
Sole Proprietor,
M/s.INTECH

... Petitioner

Versus

M/s. Kumaran Systems Pvt. Ltd.,
rep. by its Director,
Vijayasekhar Subramanian

... Respondent

PRAYER : Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the Order and Decreetal order dated 10.03.2016 in counter claim SR.No.762 of 2015 in O.S.No.287 of 2009 on the file of the learned Addl. District Judge at Chengalpattu.

For Petitioner : Mr.K.S.V.Prasad

For Respondent : Mr.P.T.Perumal for
Mr.S.Jayakumar



WEB COPY



C.R.P. No. 705 of 2017

ORDER

The revision petitioner is the plaintiff in the suit in O.S.No. 267 of 2009, on the file of Addl. District Judge, Chengalpattu, which was filed by him against the respondent/defendant herein for the relief of delivery of vacant possession as well as damages and other consequential relief.

2. According to plaintiff, the defendant herein is a tenant and he has committed default in payment of rent. Hence, a suit was filed seeking for delivery of vacant possession and recovery of arrears of rent. The said suit was contested by the defendant by filing written statement. During the pendency of suit proceedings, in the year 2013, the defendant vacated the premises. Hence, the plaintiff restricted his claim with regard to arrears of rent and not insisted for the relief of delivery of vacant possession. After vacating the premises in the year 2016, the defendant filed a counter claim in SR.No.762 of 2013. As per the counter claim, the defendant directed the plaintiff to pay a sum of Rs. 35,34,650/- towards compensation for the loss



C.R.P. No. 705 of 2017

suffered by them. On hearing both sides, the trial judge passed an order by discussing the facts and circumstances and finally allowed the counter claim as prayed for. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioner submitted that the order passed by the trial judge allowing counter claim without proof and without giving opportunity to raise his objections as such, is totally arbitrary, illegal, unjust and the same is liable to be set aside. Furthermore, he has also submitted that even assuming, that the counter claim is maintainable, the said counter claim ought to have been filed before framing of issues, at the most, before commencement of trial. In support of his contentions, he relied on the authority reported in **CDJ 2019 SC 1298** in the case of **Ashok Kumar Kara vs. Wing Cdr. Surendra Agnihotri and others**. As per the ratio laid down by the Apex Court, in this case, if the party wants to file counter claim, he has to file it before framing of issues or before commencement of trial, however, in the exceptional circumstances, it can be permitted to be filed after a written statement till the stage of



C.R.P. No. 705 of 2017

commencement of recording the evidence. As per the contentions of plaintiff, now the defendant has filed counter claim after commencement of examination of P.W.1, even otherwise, it was not maintainable.

4. The learned counsel appearing for respondent submitted that after vacating the premises, as the defendant sustained loss, he filed the counter claim claiming damages from the plaintiff and the same was rightly appreciated by the trial court. If at all, the plaintiff is aggrieved by the order passed by the trial court, he has to prefer an appeal as per Order 20 Rule 19(2) of C.P.C.

5. The provisions of the Code would clearly implicate that if any order passed in the counter claim, then the party aggrieved is entitled to prefer an appeal, because it is like a cross-suit. But, coming to the facts of the present case, the defendant approached the court with unnumbered counter claim and the same was allowed by the trial judge by discussing the facts without giving opportunity to the plaintiff to file his objections, besides, the counter claim was not also not taken on file and no number is assigned by the trial



C.R.P. No. 705 of 2017

judge. Furthermore, the learned counsel for revision petitioner submitted that before filing counter claim application, the defendant ought to have filed an application seeking to grant leave to file counter claim. But, on perusal of records, no such application was filed on the side of defendant, however, the same was failed to take note of by the trial judge. Therefore, the counter claim of revision petitioner, as such, is not maintainable in law.

6. On seeing the entire order of the trial court, it would clearly reveals that without following proper procedure in the unnumbered counter claim, the trial judge discussed the facts and allowed the counter claim in favour of defendant, as such, is totally arbitrary, unjust and erroneous one. Therefore, the order passed by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial judge in unnumbered counter claim in SR. No. 762 of 2013 is set aside. If any loss is suffered by defendant, he has to work out his remedy in a separate suit, not in this suit filed by plaintiff. However, the suit is pending from the year of 2009, the trial court is directed to proceed with the case and dispose the same within a period of six months from the date of receipt of copy of this



C.R.P. No. 705 of 2017

order. No costs. Consequently, connected Civil Miscellaneous Petition is

closed.

12.10.2022

Index : Yes/No

Internet: Yes/No

Speaking/Non Speaking order

rpp

To

Addl. District Judge,
Chengalpattu.



WEB COPY



C.R.P. No. 705 of 2017

T.V.THAMILSELVI, J.

rpp

C.R.P.No. 705 of 2017

12.10.2022