



C.R.P.No.484 of 2020 & CMP No.2615 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.484 of 2020 &
CMP No.2615 of 2020

Rithika Shyam Chari

...Petitioner

Vs.

1. N. Rangarajan
2. Meenakumari

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal orders dated 04.10.2019 passed in I.A. No.2 of 2019 in O.S. No.1064 of 2018 on the file of the XVI Additional City Civil Court, Chennai, to the extent that the chance of the 1st defendant to file it's written statement is closed.

For Petitioner	: Ms. Aishwarya S. Nathan for Mr. Srinath Sridevan
For R1	: Mr. M.V. Venkateshan

ORDER

The present civil revision petition is filed praying to set aside



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the orders dated 04.10.2019 passed in I.A. No.2 of 2019 in O.S. No.1064 of 2018 on the file of the XVI Additional City Civil Court, Chennai, to the extent that the chance of the 1st defendant to file her written statement is closed.

2. The revision petitioner is the 1st defendant in O.S.No.1064/2018 on the file of the XVI Additional City Civil Court, Chennai. The 1st respondent / plaintiff filed the suit for a mandatory injunction directing the defendants (the Civil Revision Petitioner and the 2nd respondent) to tender a written unconditional apology to the plaintiff and to pay compensation of Rs.14,00,000/- together with interest @ 6% per annum from the date of plaint till the date of realisation.

3. Since the Revision Petitioner/ 1st defendant did not file written statement, she was set *ex parte* on 02.07.2019. Thereafter, she filed a petition under Order IX Rule 7 CPC to set aside the *ex parte* order passed against her on 02.07.2019 in I.A. No.2/2019. In the said application, she has stated that since she was away from India, she could



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not file the written statement within the prescribed period. The 1st respondent/plaintiff filed a counter contending that the petition in I.A. No.2/2019 filed under Order IX Rule 7 is barred by limitation and that if the petition is allowed, serious prejudice would be caused to him.

4. After full contest, the learned trial court judge set aside the *ex parte* order passed against the 1st defendant. However, he held that the revision petitioner is entitled to contest the case without filing a written statement since the written statement is filed beyond 120 days from the date of service of notice. According to the trial court, the 1st defendant would forfeit his right to file his written statement beyond the period of 120 days as per Proviso to Order VIIi Rule 10 CPC.

5. Aggrieved over the said orders, the present Civil Revision Petition is filed by the 1st defendant.

6. Heard Ms. Aishwarya S. Nathan, learned counsel appearing for the revision petitioner and Mr. M.V. Venkateseshan, learned counsel



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WEB COPY appearing for the 1st respondent.

7. The learned counsel appearing for the revision petitioner contended that the decision in ***SCG Contracts Pvt. Ltd., Vs. KS Chamankar Infrastructure Pvt. Ltd.*** reported **2019 2 CTC** relied upon by the trial court arises out of a commercial suit and hence it was held that filing of written statement beyond the period of 120 days from the date of service of notice cannot be entertained by the court.

8. On a perusal of the decision in ***SCG Contracts Pvt. Ltd.,*** (cited supra), it is seen that the matter in issue was related to commercial dispute which would fall within the purview of Commercial Courts Act, 2015. It is pertinent to point out the Commercial Courts Act, 2015 through Section 16 amends the Code of Civil Procedure, 1908, in its application to commercial disputes. Section 16 of the Commercial Courts Act, 2015 reads thus:

Section 16: Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.

16. (1) The provisions of the Code of Civil Procedure, 1908



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(5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

9. From the above provision it is clear that after the enactment of Commercial Courts Act, there are two regimes of civil procedure. The commercial disputes (as defined in Section 2(c) of the Commercial Courts Act, 2015) are governed by CPC as amended by Section 16 of the said Act and all other non commercial disputes fall within the ambit of unamended provisions of CPC.

10. As regards the time line for filing a written statement in non commercial dispute, the Hon'ble Supreme Court in a catena of



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decisions has held that the unamended Order VII Rule 1 CPC continues to be directory and does not take away the inheritant discretion of the courts to condone the delay in filing a written statement.

11. The learned counsel appearing for the 1st respondent/plaintiff fairly conceded that the trial court had wrongly relied upon the judgment of the Supreme Court in ***SCG Contracts Pvt. Ltd.***, which deals with the commercial dispute. However, he contended that the 1st defendant had filed a petition Under Order VII Rule 11 CPC for rejection of the plaint and hence it should be taken into consideration.

12. In the decision in ***R.K. Roja vs. U.S. Rayudu and another*** reported in ***(2016) 14 SCC 275***, it has been held thus:

"3. The High Court has taken the view that the same "was not filed at the earliest opportunity" and that the appellant was not diligent in prosecuting the application. Therefore, the Court took the view that "... *this application filed by the first respondent shall be decided at the time of final hearing ...*".



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4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in *Sopan Sukhdeo Sable v. Charity Commr.* [*Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137] : (SCC p. 146, para 10)

“10. ... The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of



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the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court."

13. Order VII Rule 11 is a remedy available to the defendant to challenge the maintainability of the suit itself and filing of a petition in Order VII Rule 11 would not take away the right of filing a written statement by the defendant.

14. When the trial court has held that the 1st defendant has shown sufficient cause for not filing the written statement on time, it should have permitted the 1st defendant to file the written statement. The



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trial court has committed an error by not receiving the written statement filed by the revision petitioner/1st defendant by relying upon the decision of the Supreme Court which deals with the commercial dispute. Therefore, the present Civil Revision Petition is liable to be allowed.

15. In the result,

(i) The civil revision petition is allowed. No costs. consequently connected miscellaneous petition is closed.

(ii) the fair and decretal orders dated 04.10.2019 passed in I.A. No.2 of 2019 in O.S. No.1064 of 2018 on the file of the XVI Additional City Civil Court, Chennai, is set aside to the extent that the chance of the revision petitioner/1st defendant to file her written statement is closed.

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Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The XVI Additional Judge, City Civil Court, Chennai,
2. The Section Officer, VR Section, High Court, Madras.

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