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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	15.02.2022
DELIVERED ON	25.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1353 of 2021

and

C.M.P. (MD)No.7737 of 2021

The District Welfare Fund Committee,
Represented by its Treasurer
K.Govindaraju ...Petitioner/Petitioner/1st Defendant

Vs.

N.Balasubramanian ...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05.04.2021 made in I.A.No.3 of 2019 in O.S.No.61 of 2017 on the file of the learned II Additional District Judge, Tiruchirappalli and allow the revision and reject the plaint in O.S.No.61 of 2017.

For Petitioner :Mr.G.Ethirajulu for
Mr.P.Arun Jayatram

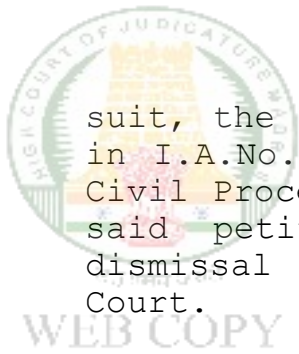
For Respondent :Mr.G.Prabhu Rajadurai, for
Mr.I.Robert Chandrakumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 05.04.2021 in I.A.No.3 of 2019 in O.S.No.61 of 2017 passed by the learned II Additional District Judge, Tiruchirappalli.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The respondent herein/plaintiff has filed a suit in O.S.No.61 of 2017 on the file of the learned II Additional District Judge, Tiruchirappalli, to recover a sum of Rs.1,08,01,608/-for damage and loss caused by the defendants. During the pendency of the aforesaid



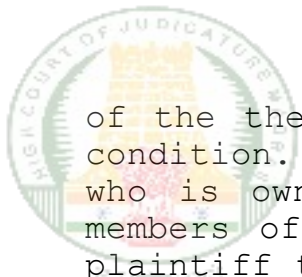
suit, the appellant/1st defendant has filed a interlocutory petition in I.A.No.3 of 2019 in O.S.No.61 of 2017 under Order 7 Rule 11 of Civil Procedure Code to reject the plaint in O.S.No.61 of 2017. The said petition was dismissed on 05.04.2021. Against the said dismissal order, the appellant herein/1st defendant is before this Court.

4.Heard on either side. Perused the material documents available on record.

5.This Civil Revision Petition is filed on the ground that the Court below has failed to consider that the averments and pleadings in the plaint is enough to come to a conclusion that the revision petitioner has rightly filed the petition under Order 7 Rule 11 of Civil Procedure Code. The Court below has failed to consider that as per the averments in the plaint that he started running the theatre on 06.07.2012 and he filed the suit in the year 2017. The suit is hit by law of limitation and Article 59 of the Limitation Act, provides three years time, thereby the suit has to be rejected by invoking Order 7 Rule 11(d) of Civil Procedure Code. The Cause of action pleaded in the plaint are vague and there is no cause of action for institution of suit for recovery of money. The Court below has failed to consider the refusal for issue of C-Form/E-Form was held correct by this Court in W.P(MD)No.1259 of 2016 and was upheld by the Division Bench of this Court in W.A.(MD)No.394 of 2016. So, non-functioning the theatre was due to non-issue of C-Form, Non-Issue of C-Form certificate is due non-issue of stability certificate. Therefore, by operation of law, the 1st defendant is not responsible for paying damage, that too, prayer for a relief asked for is not entitled. Hence, the order passed by the Court below is liable to be set aside.

6.The 1st respondent/plaintiff has filed the suit in O.S.No.61 of 2017 (i)for recovery of a sum of Rs.1,08,01,608/-being the amount spent by the plaintiff for making the suit theatre familiarly known as Kalaiyarangam theatre fit for screening the movies immediately after taking the theatre on lease on the instruction of the 1st defendant with a promise and undertaking to refund the same, which has not been done together with subsequent interest at 12% together with charge over the suit property from the 1st defendant, and (ii)for recovery of damages for the loss caused to the plaintiff by not allowing him to run the theatre during the subsistence of lease for the period from 15.01.2016 to 2017 by relegating the matter to a separate proceedings under Order 20 Rule 12 of Civil Procedure Code for ascertaining the actual loss together with charge over the suit property from both the defendants.

7.The case of the plaintiff is that he is a lessee of Kalaiyarangam theatre which is famous in Tiruchirappalli. He has taken the theatre on lease for 5 years from 08.05.2012 to 07.05.2017 for a sum of Rs.9,16,000/-. Only after taking possession



of the theatre, he understood that the theatre was not in running condition. Immediately, he contacted the 1st respondent committee who is owner of the theatre to repair the damaged building. The members of the committee inspected the building and requested the plaintiff to complete the repair work and agreed to pay the cost of repair. Accordingly, the plaintiff undertook the repair work and incurred expenses of Rs.1,08,01,608/-. After completing the maintenance work, the plaintiff started to run the theatre from 06.07.2012 onwards after informing the 1st defendant. The District Collector is the authority for granting 'C' Form license to cinema theatre in question. The very same District Collector in the capacity as the President of 1st defendant committee leased out the theatre to the plaintiff for 5 years. It is the duty for him to get 'C' Form license for the lease period. But, the District Collector refused to renew the 'C' Form license. The theatre was closed by the defendants unlawfully on 15.01.2016 around 04.00 a.m. with the help of police. As the 1st defendant complained about non-payment of rent, the plaintiff has filed writ application before this Court in W.P.(MD)No.1259 of 2016. But, it was dismissed on 29.03.2016. Against that order, W.A.(MD)No.394 of 2016 is also disposed by this Court. The writ proceedings have nothing to do with the present suit. The plaintiff is not liable to pay rent for the period when it was closed. The plaintiff is entitled to recover the expenses incurred for rectification of damages of the theatre. Moreover, he is entitled to get the loss because of the closure of the theatre by the defendants. Hence, this suit is filed to recover a sum of Rs.1,08,01,608/-damage and loss caused by the defendants.

8.The defendant has filed a petition under Order 7 Rule 11 to reject the plaint. The averments in the petition is that there is no cause of action in the suit. Admittedly, the theatre began to screening cinema from 06.07.2012. Therefore, the expenses incurred before the above date is barred by limitation. The alleged damage caused to the plaintiff is nothing but statutory function of the District Collector. As the plaintiff failed to comply the statutory requirements, the 'C' form license was denied to him. The District Collector was challenged by the respondent in W.P.(MD)No.1259 of 2016 and the same was rejected by this Court. The appeal in W.A (MD).No.394 of 2017 was also dismissed by this Court. Hence, the suit is not maintainable and the plaint may be rejected in *limine*.

9.The respondent/plaintiff has also filed counter and stated that the petition in I.A.No.3 of 2019 is not maintainable and there is no ground to reject the plaint. Whether the claim is barred by law of limitation or not? is a mixed question of law and fact. In such case, the question of limitation cannot be decided at this stage. The petitioner has filed a suit in O.S.No.80 of 2017 as a counter blast of this suit. The period of limitation for filing suit to recover the cost incurred by the plaintiff starts from the date of refusal of the 1st defendant. The date of refusal is not



period expired only on 07.05.2017. In such situation, the plaintiff claim for reimbursement cannot be termed as barred by limitation. In the complete trial only, the question can be decided. The right of recovery of cost incurred by the plaintiff starts only from the date when the lease period come to end. The District Collector has leased out the theatre in the capacity of President of the 1st defendant committee ensuring that the theatre is in sound stability condition for 5 years. But, in the capacity of Collector, he refused to renew the 'C' form license quoting the reason that building is not stable for public safety. Therefore, the plaintiff is entitled to get the damages. After conducting complete trial only, the plaint pleadings could be proved. Without conducting trial, the reasons stated in the affidavit is not acceptable.

10.The defendant leased out the property for five years from 08.05.2012 to 07.05.2017. After informing the defendant the plaintiff did repair works and running the theatre. The defendant did not renew 'C' form which was expired on 30.11.2012. The respondent/plaintiff filed W.P.(MD)No.5400 of 2015 to issue 'C' form license. The writ was allowed and direct the petitioner/defendant to issue 'C' form on deposit of 25% of rental amount with tax. The amount was also deposited. Subsequently, 'C' form was renewed from 11.06.2015 to 14.01.2016.

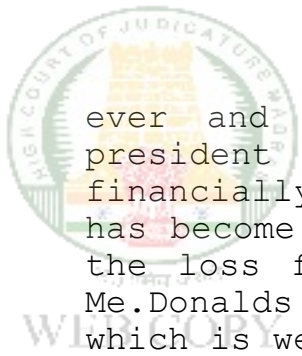
11.After that the theatre was closed on 15.01.2016. The petition in W.P.(MD)No.1259 of 2016 was rejected by this Court. The appeal in W.A(MD).No.394 of 2017 was also dismissed by this Court.

12.Now, the respondent/plaintiff has filed the suit for recovery of money and damages. Whether the plaintiff is entitled for money as prayed for will be decided after full trial.

13.The following issues are to be decided in this Civil Revision Petition:

- (i)Whether the suit is barred by limitation?
- (ii)Whether there is no cause of action?

14.In the plaint there is cause of action. The cause of action for the suit arose on and from 03.05.2012 the date of the order issued by the 1st defendant granting lease of the suit theatre to the plaintiff for a period from 08.05.2012 to 07.05.2017 viz., for five years. Consequently, the president of 1st defendant committee also granted a 'C' Form License in his capacity as District Collector, on instructions from 1st defendant the plaintiff had to incur the expenses over and above to the tune of Rs.1,08,01,608/-to make the theatre fit for screening movies as aforesaid which the 1st defendant has undertaken to return the said amount which amount has not been returned by the 1st defendant , subsequently, the defendants for obvious reasons saw to it that C-Form license is not renewed for a period from 15.01.2016 without any justification what so



ever and on the ground of non renewal of C-Form license the president has closed the theatre thereby causing immense loss financially to the plaintiff and everyday thereafter the plaintiff has become entitled to file the suit for recovery of amount and for the loss for not allowing the theatre to be run as aforesaid at Me.Donalds Road, Cantonment, Tiruhirappalli Taluk and District, which is well within the jurisdiction of this Court.

15.To decide the petition under Order 7 Rule 11 the pleadings in the plaint alone has to be looked into.

"11. Rejection of Plaint:-

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action,*
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9*

Provided that the time fixed by the court for the correction of the valuation of supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from connecting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

16.As per petition, the suit is barred by limitation. Since the money due is in the year 2012 when the plaintiff did repair works. But, the plaintiff has contended that the defendant has refused to pay the amount when rejecting the renewal of 'C' form from 15.01.2016. So, the period of limitation commences from 2016.

17.It is a mixed question of law and facts. There is no written agreement for the lease. Only oral agreement. So, the plaintiff has to prove his right of sue is infringed on what date only after full trial.



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18.The paragraph No.6 of the Judgment reported in **2015-5 LW 905**, in the case of **Gururaj Reddy and another Vs. P.Neeradha reddy and others**, is extracted hereunder:

....
"6.In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings exfacie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."

19.In view of the foregoing reasons, the trial Court has rightly dismissed the I.A.No.3 of 2019 in O.S.No.61 of 2017, for the reasons stated in the order. This Court has no valid reason to interfere with the order passed by the Court below.

20.Accordingly, the Civil Revision Petition is dismissed by confirming the fair and decreetal order, dated 05.04.2021 in I.A.No.3 of 2019 in O.S.No.61 of 2017 passed by the learned II Additional District Judge, Tiruchirappalli. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To
The II Additional District Judge,
Tiruchirappalli.

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