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O.S.A. No.227 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

O.S.A. No.227 of 2021

and

C.M.P. No.9686 of 2021

Mr.Farok Sarkari (deceased)
Represented by his legal heir
Mrs.Tara Sarkari and Mrs.Amit Sarkari ... Appellant / Applicant

v.

M/s.New Finn Groups
Rep. By its Partners
1.Mr.A.Balasubramanian
2.Mr.A.Manthira Moorthy. ... Respondent / Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original
Side Rules read with Clause 15 of Letters Patent praying to set aside the order
dated 29.01.2021 passed by the learned Judge in Application No.1811 of 2020.

For Appellant : Mr.Harishankar

For Respondent : Mr.C.P.Sivamohan



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JUDGMENT

(Judgment of the Court was made by *MOHAMMED SHAFFIQ,J.*)

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The short question that arises for consideration is, whether the filing of a counter claim, the value of which exceeds the pecuniary limit/jurisdiction of the City Civil Court, in which the original suit is pending, but falls within the pecuniary limit of the Original Jurisdiction of the High Court is a circumstance, which warrants exercise of discretion to withdraw/remove the original suit from the file of the City Civil Court and transfer the same to be tried by the High Court by invoking powers under Clause 13 of Letters Patent read with Section 24 of the Civil Procedure Code.

2. The appellants herein are the legal heirs of the applicant in Application No.1811 of 2020. A suit in O.S. No.4820 of 2019 was filed before the III Additional City Civil Court, Chennai, by one M/s. New Finn Groups represented by its partners viz., Mr.A.Balasubramanian and Mr.A.Manthira Moorthy i.e, the respondent herein, for recovery of a loan amount of Rs.10,00,000/-, alleged to be borrowed by the defendant in the suit i.e., the father of the appellants herein (during the pendency of the suit, the father died and the present appellants were impleaded as parties to the same), covered under a registered promissory note and for a permanent injunction restraining

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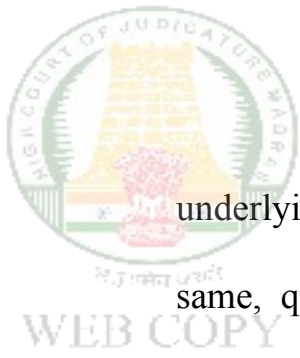


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the defendant in the suit/applicant from in any way disturbing, interfering and threatening the plaintiff and his family in his place of business / residence under the guise of demanding cancellation of the registered promissory note dated 28.08.2018 bearing Document No. 47 of 2018 on the file of S.R.O. at Surandai. The said suit is admittedly pending before the III Additional City Civil Court, Chennai.

3. During the pendency of the above suit, an application came to be filed by the defendant in the suit, under Order 8 Rule 6A of the Civil Procedure Code (hereinafter referred to as “the CPC”) lodging a counter claim in respect of a sum of Rs.2.70 crores. The said application is pending consideration before the III Additional City Civil Court, Chennai.

4. Whiles, the defendant in the suit / applicant filed a transfer application under Clause 13 of the Letters Patent read with Section 24 of the CPC praying that this Court may withdraw the suit in O.S. No.4820 of 2019 from the file of the III Additional City Civil Court, Chennai and transfer the same to the High Court to be tried in accordance with law. The said transfer application was filed on the premise that the suit in O.S. No. 4820 of 2019 and the counter-claim of Rs. 2.70 crores may have to be tried together, since the



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underlying transactions in the suit and the counter-claim, the parties to the same, question of law involved, documents and witnesses adduced are all common. Further, the counter-claim made by the applicant exceeds the pecuniary jurisdiction of the III Additional City Civil Court, Chennai. Hence, it would be convenient rather necessary in the interest of justice to try the suit and counter-claim by the High Court, so as to avoid multiplicity of proceedings.

5. The learned Judge was of the view that the counter-claim has been filed in gross disregard to the fact that the same is in excess of the pecuniary limit of jurisdiction of the City Civil Court, where the suit in O.S.No.4820 of 2019 is pending, thereby hit by the embargo contained in Order 8 Rule 6A of the CPC. The learned judge thus found that the application for withdrawal under Clause 13 of Letters Patent read with Section 24 of the CPC was an abuse of process of the Court. Accordingly, the learned Judge dismissed the said application.

6. It is this order of the learned judge, which is under challenge *inter alia* on the following grounds viz.,

a) Procedures are handmaid of justice meant to advance the cause of justice.



b) The learned judge ought to have seen that the court fee in respect of the counter-claim has been paid.

c) The counter-claim is in the nature of the cross suit and thus, there is no need to file an independent suit in respect of a case, where the underlying transaction and the documents relied on, for the purposes of adjudicating the suit and the counter-claim which are one and the same and the *bona fide* of the applicant is beyond doubt.

d) The very purpose of filing the counter-claim was to avoid multiplicity of proceedings and conflict of judgments on the same subject matter by different courts, which the learned judge failed to appreciate.

e) The learned judge has not considered/applied his mind to the request/prayer for withdrawal/ removal of the original suit and transfer the same to the High Court from the file of the III Additional City Civil Court where the suit is pending, thereby affecting vital rights of the applicant resulting in producing results that are unjust.

7. To the contrary, it is submitted by the learned counsel for the respondent that the order of the learned judge on the finding that the filing of a counter-claim overlooking/disregarding the limitation based on the pecuniary

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jurisdiction of the Court and the subsequent filing of the application for withdrawal of the pending suit from the file of the City Civil Court and transfer the same to the High Court under Clause 13 of the Letters Patent read with Section 24 of the CPC is clearly an abuse of process of Court, does not warrant interference.

8. Heard both sides. Perused the material on record.

9. To answer the question that arises for consideration herein, one would have to understand and appreciate the interplay between Clause 13 of the Letters Patent read with Section 24 and Order 8 Rule 6A of the CPC.

9.1. Before proceeding further, it may be relevant to understand the nature of the counter-claim, for it is the filing of the counter claim in excess of the pecuniary jurisdiction, which led the learned judge to reject the application for withdrawal of the suit pending before the III Additional City Civil Court without considering the said application in terms of Clause 13 of Letters Patent read with Section 24 of the CPC. It may thus be necessary to extract Order 8 Rule 6A of the CPC, which reads as under;

Order VIII Rule 6A of the CPC

“6A - Counter-claim by defendant - (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way



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of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

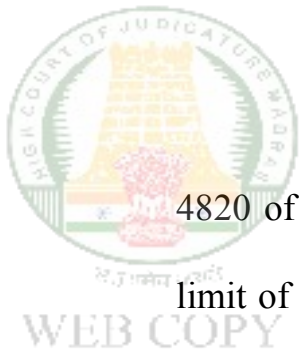
(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, but on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

9.2. A reading of the proviso to Order VIII Rule 6A of the CPC would show that any counter claim shall not exceed the pecuniary limit of the Court where the suit is pending. Admittedly, the counter claim is for a sum of Rs.2.70 crores which is in excess of the pecuniary jurisdiction of the City Civil Court, where the original suit is pending, which is less than/up to Rs. 1 Crore. The counter-claim is in the nature of a Suit.¹ The pecuniary limit of jurisdiction of a City Civil Court being limited to Rs.1 crore, the counter claim of Rs. 2.70 Crores under Order 8 Rule 6A of CPC would be hit by the proviso to Order 8 Rule 6A (1) of the CPC. There can be no two views about the non-maintainability of the counter-claim made by the applicant / defendant in O.S.

¹*Rajini Rai vs. Kai Raithilal, (2015 2 SCC 682)*



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4820 of 2019 for Rs. 2.70 Crores inasmuch as it is in excess of the pecuniary limit of the jurisdiction of the Additional City Civil Court, Chennai, where the original suit for recovery of Rs. 10 Lakhs is pending. Resultantly, the counter-claim would fall within the proviso to Order 8 Rule 6A (1) of the CPC, which provides that the counter-claim cannot exceed the pecuniary limit of the Court. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Satyender v. Saroj*, reported in 2022 SCC OnLine SC 1026, to appreciate the scope of the proviso to Order 8 Rule 6A of the CPC, the relevant portion of the said judgment reads as under:

“... The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter-claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter-claim must be instituted before the defendant has delivered his defence or before the time limit for delivering his defence has expired.....”

(emphasis supplied)

10. Having found that the counter-claim of Rs.2.70 crores made by the defendant / applicant is in excess of the pecuniary limit of the jurisdiction of the City Civil Court, where the original suit in O.S.No.4280 of 2019 is pending, thereby need arises for the institution of an independent suit before this Court.

It was contended on the side of the appellants that the said reason ought to have



been weighed by the learned Judge, while examining the prayer / request for removal / withdrawal of the suit pending before the III Additional City Civil Court in terms of Clause 13 of Letters Patent to avoid multiplicity of proceedings / conflicting views in the interest and purpose of justice. The question that arises for consideration is, whether it is permissible for the High Court to reject the request of withdrawal/removal of the suit pending before the III Additional City Civil Court, Chennai only in view of the fact that the applicant's counter claim under Order 8 Rule 6A is found to be unsustainable without applying its mind nor making the requisite enquiry independent thereof to find, whether the circumstances warrant / exist for exercise of its power under Clause 13 of the Letters Patent to remove and try the suit in O.S.No. 4280 of 2019 pending before the III Additional City Civil Court. It may be relevant to refer to Clause 13 of the Letters Patent and Section 24 of the CPC, which read as under:

Clause 13 of the Letters Patent:

13. Extraordinary Original Civil Jurisdiction:

"And we do further ordain that the said High Court of Judicature at Madras shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the



parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

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Section 24: General power of transfer and withdrawal:

"(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) proceeding includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."



10.1. A reading of Clause 13 of the Letters Patent read with Section 24 of the CPC would show that the High Court is conferred with the power to transfer and withdraw the suit pending before other Courts subordinate to it. Transfer and withdrawal of the suit are two distinct powers conferred on the High Court for the purposes of jurisdiction. The power of removing/ withdrawing a suit from a subordinate court by the High Court to try and determine as a court of Extraordinary Original Jurisdiction under clause 13 of Letters Patent would show that when the High Court exercises its power on an application to withdraw/remove a suit pending in a subordinate Court, the application shall be decided after hearing such of the parties desirous of being heard and reason recorded for doing so. In the present case, the application was filed for withdrawing the suit in O.S. No. 4820 of 2019 pending before the III Additional City Civil Court at Chennai and after hearing both sides, the learned judge has rejected the said application on the finding that the application is an abuse of process of court inasmuch as the counter claim is in excess of the pecuniary jurisdiction of the City Civil Court. It is against the order of the learned judge rejecting the application for withdrawing the suit under Clause 13 of Letters Patent read with Section 24 of the CPC that the present appeal is filed.



11. We are of the considered view that the order of the learned judge warrants interference inasmuch as the enquiry by the Court was confined to the scope of Order 8 Rule 6A of the CPC, while paying very little rather no attention to the power to withdraw / remove the suit under Clause 13 of the Letters Patent. The exercise of power under Clause 13 of the Letters Patent shall be guided by reasons, which advance/promote justice as would evident from the expressions "*for purposes of justice*" employed in Clause 13 of the Letters Patent.

12. However, a reading of the order of the learned judge would reveal that the learned judge was swayed by the fact that the counter-claim under Order 8 Rule 6A of CPC is in excess of pecuniary jurisdiction and failed to express any opinion on the merit of the application for withdrawing / removing the suit pending before the III Additional City Civil Court to itself, rather, failed to examine / apply his mind to the said issue. Thus, the failure on the part of the learned judge to deal/examine the application in terms of Clause 13 of the Letters Patent, results in affecting the rights of the applicant to have his application considered in accordance with Clause 13 of the Letters Patent.



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13. In the above circumstance, we set aside the order impugned herein and remit the matter to the learned judge to decide the application for withdrawal / removal of the suit keeping in view the object and purpose of Clause 13 of the Letters Patent. Accordingly, the Original Side Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
09.11.2023

Speaking (or) Non Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
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