



CRP. Nos.1714 and 3019 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI
CRP. Nos. 1714 and 3019 of 2022 &
CMP Nos. 8639 & 16375 of 2022

CRP. No. 3019 of 2022

- 1.P.Anand
- 2.M.N.Sakthivelsamy
- 3.K.R.Rajmohan
- 4.V.Gopalakrishna Vasa
- 5.A.Ibramshah
- 6.P.Rajkumar

...Petitioners

Vs.

- 1.Era.Velusamy
2. Palladam Hi-Tech, Weaving park
Rep by its Chairman/ Managing Director,
Palladam.
- 3.M.Senthilkumar
Chairman/Managing Director,
Palladam Hi-Tech Weaving Park,
Palladam.

... Respondents.

PRAYER in CRP No. 3019 of 2022 : This Civil Revision Petition is filed under Article 227 of Constitution of India, to struck off the plaint in O.S No. 61 of 2022 on the file of District Munsiff Court at Palladam.

For Petitioners : Mr.P.H.Aravind Pandian, Senior Counsel.



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for M/s. G.Selvi George
For R1 : Mr.K.Magesh
For R2 and R3 : No appearance

CRP. No. 1714 of 2022

1.P.Anand
2.M.N.Sakthivelsamy
3.K.R.Rajmohan
4.V.Gopalakrishna Vasa
5.A.Ibramshah
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Vs.

1.Era.Velusamy
2. Palladam Hi-Tech, Weaving park
Rep by its Chairman/ Managing Director,
Palladam.
3.M.Senthilkumar
Chairman/Managing Director,
Palladam Hi-Tech Weaving Park,
Palladam
4.M.N.Sakthikvel Samy
Director, Palladam Hi-Tech Weaving Park,
Palladam.

... Respondents.

PRAYER in CRP No. 1714 of 2022 : This Civil Revision Petition is filed under Article 226 of Constitution of India, to set aside the docket order made in I.A No. 128 of 2022 in O.S No.61 of 2022 dated 26.04.2022 on the file of District Munsiff Court, Palladam.

For Petitioners : Mr.P.H.Aravind Pandian, Senior Counsel.
for M/s. G.Selvi George.



CRP. Nos.1714 and 3019 of 2022

For R1 : Mr.K.Magesh
For R2 and R3 : No appearance

COMMON ORDER

The petition in CRP No. 3019 of 2022 is filed to struck off the plaint in O.S No. 61 of 2022 on the file of District Munsiff Court at Palladam and the petition in CRP No. 1714 of 2022 is filed to set aside the docket order made in I.A No. 128 of 2022 in O.S No.61 of 2022 dated 26.04.2022 on the file of District Munsiff Court, Palladam.

2. The Revision Petitioners herein are defendants 3 to 6 in the suit in O.S No.61 of 2022 on the file of the District Munsif Court, Palladam, filed by the first respondent herein/ERA.Velusamy for the relief of permanent injunction restraining the defendants from any way conducting the extraordinary general body meeting on 30.04.2022 of the company or any subsequent dates without presiding the same by the chairman/Managing Director of the company and other consequential relief. On receipt of the notice, the Revision Petitioners herein filed this petition to strike off the plaint in O.S No. 61 of 2022 under Article 227 of Constitution of India, stating that the Trial Court has no jurisdiction to try the suit since because



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issue involved in this case is that all the parties are share holders of the second respondent company incorporated under Companies Act, 1956 and issued notice to conduct extraordinary General Body meeting of the general share holders, having received the same, first respondent/plaintiff herein filed a suit before the Trial Court as such is not maintainable for the reason that Section 430 of Companies Act bars the Civil Court to entertain the suit which is abuse of process of law, but the Trial court without applying its judicious mind, erroneously entertained the suit as such is liable to be set aside. Hence, they have preferred these Civil Revision Petitions.

3. The learned counsel for the respondents submitted that the 1st respondent is one of shareholder of the second respondent company and the main object of the said company is to establish, develop, promote textile woven fabrics and allied activities to enable promotion and growth of weaving industry in Coimbatore District. Further, the first respondent put great efforts and concentrated in developing the activities of the company and for the subsistence of the powerloom weavers. Though he ceased to be the Director of the 2nd respondent company, the Board continued him to be a shareholder of the said company holding 6300 equity shares. Later, he retired due to his inconvenience. Now the present Director of the Board are



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proposed to expel some of the shareholder including the 1st respondent from the company in order to include their relatives as shareholders and they are attempting to take entire control over the second respondent company. For that, they wanted to convene the General Body Meeting without sending proper notice to the shareholders in order to achieve their hidden agenda of amending clause 36 by inserting new clause in the Article of organisation of the company numbered as 36 A, 36B and 36C, for which there is no provision in the Article of the organisation of the company or in the provision of the companies Act. Therefore, individual right of the first respondent likely to be affected by the decision of the Board. Hence, he rightly approached the Trial Court for getting relief of declaration, thereby Civil court has jurisdiction in respect of prayer claimed in the suit. Hence, he prayed to dismiss these Civil Revision Petitions. Further he would also submit that if the suit is barred under law, the revision petitioner should have filed the petition before the Civil Court by invoking Order 7 Rule 11 to reject the plaint, instead of that they filed these petitions under Article 226 of Constitution of India as such is not maintainable and to substantiate his claim he relied the judgment of this Court in the case of Dr.K.Natarajan & Others Vs. K.Krishna Perumal:



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4. The contention of the petitioners squarely fall within the ambit of Sub-Clause (b). Hence, the petitioner can very well file a petition under *Order VII Rule 11 CPC* before the trial Court praying for the rejection of the plaint on the ground that the suit is barred by law. Of course, there are a few judgments which say that when suits are filed in the Courts without jurisdiction and when suits are filed disregarding the bar provided under a statute, the High Court can exercise its extraordinary power under *Article 226* of the Constitution of India or its power of superintendence over subordinate Courts under *Article 227* of the Constitution of India to strike off the plaint. But, it is also a celebrated principle enunciated in a number of judgments, which this Court deems unnecessary to be cited herein that when an effective and efficacious alternative remedy is available, the extraordinary jurisdiction of the High Court either under *Article 226* or under *Article 227* of the Constitution of India shall not be exercised. The only exception provided for such rule of prudence is the infringement of a fundamental right and cases of parties approaching the Court for enforcement of their fundamental rights. In such a case, despite the availability of the alternative remedy, the Court, being the guardian of the fundamental rights conferred by the Constitution, shall protect their interest by exercising the extraordinary power.

4. By way of reply the learned counsel for the Revision Petitioners submitted that the Civil court is barred by Act, hence the suit can be rejected without invoking order 7 Rule 11 of CPC by *Suo Motu* and to that effect he relied the judgment of the Apex Court in the case of ***Patil Automation Private Limited and others Vs Rakheja Engineers Private Limited*** reported in ***2022 10 SCC***



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94....*The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order IV Rule 1 (3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order VI and Order VII.*

(B) When the court decides the question as to issue of summons under Order V Rule 1, what the court must consider is whether a suit has been duly instituted. (C) Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order VII Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the court can reject the plaint under Order VII Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order VII Rule 11. In other words, the power under Order VII Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgement of this Court in [Madiraju Venkata Ramana Raju](#) (supra).

5. Considering the submissions on either side, it reveals that the 1st respondent/plaintiff is one of the shareholder in the second respondent company and filed a suit for permanent injunction restraining the revision



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petitioners from any way attempting to conduct extraordinary general body meeting on 31.04.2022 or any other dates without presiding the same by the chairman/Managing director of the company. On a bare perusal of the records, it reveals that the revision petitioner is a shareholder in the second respondent company filed a suit against the defendants 1 to 3 and its directors. The defendants were proposed to conduct the extraordinary general body meeting in order to amend the Article 36 of the company, aggrieved over the same the plaintiff approached the Civil court praying for permanent injunction not to conduct the extraordinary general body meeting proposed to be convened by the directors of the company. The main allegation of the plaintiff/first respondent herein is that directors are wanted to insert certain clause by amending clause 36 of the article of association of the company. If the plaintiff had any grievance over the same, he ought to have approached the Tribunal as per Section 241 of Companies Act, but the plaintiff filed a Civil suit before the trial court. If any of the affair of the company is not conducted as per procedures, the member of the company can approach the tribunal. Furthermore, as per the Section 430 of the Companies Act, there is a bar for Civil Court to try the suit. Further, the plaintiff/1st respondent was the director of the second respondent company



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for more than 15 years. Therefore, he is well aware of the Companies Act, but without approaching the Tribunal, he filed the civil suit, as such is abuse of process of law and the judgment relied on by the petitioner is applicable to the facts of the case. Hence, the plaint in O.S No. 61 of 2022 is ordered to be strike off and the docket order passed in I.A No. 128 of 2022 in O.S No. 61 of 2022 dated 26.04.2022 is set aside. Accordingly, these Civil Revision Petitions are allowed. Three weeks time is granted for the 1st respondent to approach the Tribunal as per manner known to law. No costs. Consequently, Connected miscellaneous petition is/are closed.

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T.V.THAMILSELVI,J.

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To

The District Munsiff Court at Palladam.

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