



C.R.P.(MD)No.176 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
14.06.2023	16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.176 of 2023

and

C.M.P.(MD)No.830 of 2023

M/s.S.M.I.L.E. Micro Finance Ltd.,
Rep. by its M.D. Mr.V.T.Prabhakaran

... Petitioner

VS.

1.M/s.Fathi Softward (Pvt.) Ltd.,
Formerly M/s.Trinity Signal Technology Pvt. Ltd.,
Rep. by its Managing Director,
Dr.S.Brathiba

2.M/s.Craft Silicon Pvt. Ltd.,
Rep. by its Chief Executive Officer,
Kamal Budhabhatti

3.Mahasemam Trust,
Rep. by its Trustee

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in O.S.No.7 of 2016, pending on the file of the V Additional District Judge, Madurai, and set aside the docket order passed on 21.12.2022, by which the Memo filed by the petitioner in O.S.No.7 of 2016 has been rejected and pass an order holding that the suit proceedings in O.S.No.7 of 2016 as having been abated.



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C.R.P.(MD)No.176 of 2022

For Petitioner

: Mr.P.S.Raman
Senior Counsel
for Mr.K.Hemakarthiskeyan

For R1

: Mr.V.Ramakrishnan

For R2

: No Appearance

ORDER

The petitioner herein is the first defendant in O.S.No.7 of 2016, pending on the file of the V Additional District Court, Madurai. The suit has been filed by the first respondent/plaintiff for the following relief:-

"[a] granting a decree for rendition of accounts, directing the defendant to render a true and proper accounts for the usage of the software Program of the plaintiff in the various branches of the defendant from 05.04.2007 till date and pay the legitimate amount that may be found due to the plaintiff together with a reasonable interest that may be fixed by this Hon'ble Court.

[b] directing the defendants herein to pay to the plaintiffs the costs of this action; and

[c] granting such other and further reliefs, which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and thus render justice."

2.The specific case of the petitioner is that the first respondent/plaintiff Company has been struck off from the Register of Companies maintained by the Registrar of Companies, Ministry of Corporate Affairs, under Section 248 of the Companies Act, 2013, as early as 29.06.2017. It is therefore submitted that the petitioner herein, who is the first defendant before the V Additional District Court, Madurai, filed a Memo dated 04.03.2022 on 08.04.2022, on the ground that the first



respondent/plaintiff does not exist as Company in the eye of law. Therefore, the plaintiff is liable to be struck off.

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3.The Memo filed by the petitioner reads as under:-

"MEMO FILED ON BEHALF OF THE 1st DEFENDANT

The 1st Defendant above named begs to submit as follows:-

1. The Plaintiff has filed the suit in O.S.No.7/2016 seeking a decree for rendition of accounts directing the 1st Defendant to render a true and proper accounts for the usage of the software program of the Plaintiff in various branches of the 1st Defendant from 05.04.2007 till date and pay the legitimate amount that may be found due to the Plaintiff together with a reasonable interest that may be fixed by this Hon'ble Court.

2. It has now come to the knowledge of the 1st Defendant that the Plaintiff company has been struck off from the register of companies as early as on 29.06.2017 and its certificate of incorporation has been cancelled. However, the said fact has not been disclosed by the Plaintiff. In this regard, the following documents are filed along with this memo as annexures.

(i) A copy of the notice dated 07.04.2017 issued by the Registrar of Companies in proceedings in File No: ROC/CHN/DR(SK)/1/PVT.ACT/STK-5 under Section 248(1) of the Companies Act, 2013 (the name of the Plaintiff Company is at Sl.No.1452)

(ii) A copy of the notice of striking off and dissolution dated 05.07.2017 issued under Section 248(5) of the Companies Act, 2013 by the Registrar of Companies in proceedings in File No: ROC/CHN/STK-7/1/2017 annexed herewith. (name of the Plaintiff company is at Sl.No.1043)

3. The Plaintiff in the present suit is a Company specialized in creating software programmes. It is trite law that a company gets a right to sue or be sued only when it is incorporated. In the absence of incorporation under the Companies act, an association of persons or body of persons would not get themselves converted into a juristic person viz a Company.

4. It is submitted that with the striking off the name of the Plaintiff Company, the legal and corporate entity enjoyed by the Company under the Companies Act is completely denuded. Therefore, for all purposes, the



Plaintiff company became non-existing in the eye of law as early as in 2017.

5. It is noteworthy to mention that once Plaintiff company is struck off, it stands dissolved and as such the suit pending on the file of this Hon'ble Court cannot proceed since the right to sue no longer survives. In support of the aforesaid contention, judicial pronouncements of various High Courts are also filed along with this memo in the form of typed set.

It is therefore prayed that this Hon'ble Court may be pleased to take this memo on record and dismiss the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

4.The grievance of the petitioner is that since the first respondent/plaintiff Company does not exist, the suit filed by them in O.S.No.7 of 2016, cannot be proceeded further, although it was instituted prior to the first respondent/plaintiff Company being struck off from the Register of Companies maintained by the Registrar of Companies on 29.06.2017.

5.It is submitted that the first respondent/plaintiff is the defunct Company and till date, no steps have been taken to restore the Company to the files of the Registrar of Companies.

6.The learned counsel for the first respondent on the other hand submits that a plaint can be struck off only under Order 6 Rule 16 of C.P.C. It is submitted that Order 6 Rule 16 of C.P.C. is not attracted under the circumstances. Therefore, the Memo, which has been rejected by the Court on 21.12.2022 does not warrant any interference at this stage.



7. That apart, it is submitted that the petitioner has also filed an application in I.A.No.577 of 2021 under Order VII Rule 11 of C.P.C. and that the Court below was informed about the same on 21.12.2022 and therefore, the Court below concluded that the Memo filed by the petitioner was liable to be rejected, although the order dated 21.12.2022 is cryptic. That apart, it is submitted that there are several provisions in Order IX Rule 9 of C.P.C., where the suit can be dismissed. It is submitted that none of the circumstances mentioned therein are attracted.

8. It is submitted that merely because the name of the Company was struck off from the Register of Companies maintained by the Registrar Companies under Section 248 of the Companies Act, 2013, *ipso facto* would not mean that the first respondent Company cannot continue with the suit instituted prior to striking out the name of the Company from the Register of Companies maintained by the Registrar of Companies.

9. It is submitted that under Section 250 of the Companies Act, 2013, there is a saving clause even in the case of the Company, which has been notified as dissolved and that such dissolution does not bar any proceedings for realising the amount due to the Company and for payment or discharge of liabilities or obligation of the Company. Therefore, the learned counsel for the first respondent/plaintiff submits that the Court below at best can be directed to dispose I.A.No.577 of 2021 filed by



first the respondent/plaintiff to restore the plaint or in the alternative, the Court below can be directed to dispose O.S.No.7 of 2016 on merits as expeditiously as possible and hence, he prayed for dismissal of the present Civil Revision Petition.

10.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the first respondent.

11.The suit that has been instituted by the first respondent in O.S.No.7 of 2016 under Order VII Rule 1 of C.P.C. cannot be short-circuited, merely because the first respondent's/plaintiff's name has been struck off from the Register of Companies maintained by the Registrar of Companies.

12.The provisions of Sections 248 and 250 of the Companies Act, 2013, make it very clear that even if the name of the Company is struck off from the Register of Companies maintained by the Registrar of Companies, its registration shall be deemed to have been cancelled from such date. However, there is no embargo for the suit to be filed or to be continued for the purpose of realising the amounts due to the Company and for the payment or discharge of the liabilities or obligations of the Company. In other words, the Company, whose name has been struck off from the Register of Companies maintained by the Registrar of Companies, cannot carry on any business. However, the proceedings which have already been initiated for the



purpose of realising the amount due to the Company can be proceeded. Similarly, the assets of the Company can be attached and brought to sale to discharge the liabilities or obligations of the Company. The Company can also enter into transactions for discharging the liabilities and obligations even after its name has been struck off from the Register of Companies maintained by the Registrar of Companies. Therefore, I am of the view that there is no case made out for striking off the plaint, merely because the name of the Company has been struck off from the Register of Companies maintained by the Registrar of Companies.

13. That apart, Order VI Rule 16 of C.P.C., deals with specific instances when a plaint can be struck off. Similarly, there are instances under Order IX of C.P.C., when a suit can be dismissed. In any event, it stands confirmed that the petitioner has also filed an application under Order VII Rule 11 of C.P.C. If advised, the petitioner may choose to pray for a relief in the said I.A. on merits if the facts so warrant. A reading of the impugned order also indicates that I.A.No.577 of 2021 filed under Order VII Rule 11 of C.P.C. is pending. I.A.No.577 of 2021 filed under Order VII Rule 11 of C.P.C. shall be disposed on merits and in accordance with law keeping in mind the observations made herein.

14. In view of the above, I do not find any merit in the present Civil Revision Petition. The Civil Revision Petition is therefore liable to be dismissed.



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Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous
Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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16.06.2023

To

The V Additional District Judge,
Madurai.



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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.176 of 2023

DATED: 16.06.2023