



C.R.P(MD)No.178 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.178 of 2019

and

C.M.P(MD)No.789 of 2019

1.P.Rajagopal (Died)

2.R.Dhanalakshmi

3.R.Karuppiyah Gopi

4.R.Rekha

...Petitioner/Petitioner/
Defendant

(Petitioners 2 to 4 are brought on record as legal heirs of the deceased sole petitioner vide Court order dated 20.07.2022 made in CMP(MD)Nos. 10172 and 10174 of 2021 in CRP(MD)No.178 of 2019)

Vs.

1.Chandrakumar

2.Manimegalai

...Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated



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11.12.2018 made in I.A.No.1158 of 2018 in O.S.No.123 of 2014 on the file of the Principal District Munsif Court, Dindigul.

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For Petitioners : Mr.K.Hemakarthykeyan

For Respondents : Mr.M.Karthikeyan

ORDER

This civil revision petition has been filed against the order passed by the Principal District Munsif Court, Dindigul in I.A.No.1158 of 2018 in O.S.No.123 of 2014, dated 11.12.2018.

2. The petitioner herein is the petitioner/defendant and the respondents herein are the respondents/plaintiffs before the trial Court.

3. For the sake of convenience, the parties will be referred as per the litigative status before the Trial Court.

4. It appears that the respondents/plaintiffs has filed a suit for the relief of declaration and injunction in the year 2014. When the suit was at the trial stage, the respondents/plaintiffs laid the pipe line. Hence, it necessitated the petitioner/defendant to file counter claim with the relief of mandatory injunction.



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5. The trial Court has ultimately rejected the prayer of the petitioner/defendant vide order 11.12.2018.

6. Aggrieved with the order of the Court below, the petitioner/defendant is before this Court.

7. The learned counsel for the petitioners would fairly concede that they have filed a counter claim only at the part heard stage. It is also pertinent to mention here that the learned counsel for the petitioners has fairly submitted before this Court that, by virtue of the ruling in the case of ***Ashok Kumar Kalra Vs Wing Cdr.Surendra Agnihotri and others*** reported in ***2020 2 MLJ 189***, the filing of the counter claim is not maintainable. For ready reference, the relevant portion of the order is extracted hereunder:

"20. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter claim,



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which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.*
- ii. Prescribed limitation period for the cause of action pleaded.*
- iii. Reason for the delay.*
- iv. Defendant's assertion of his right.*
- v. Similarity of cause of action between the main suit and the counter claim.*
- vi. Cost of fresh litigation.*
- vii. Injustice and abuse of process.*
- viii. Prejudice to the opposite party.*
- ix. and facts and circumstances of each case.*
- x. In any case, not after framing of the issues."*

8. The above ratio is self explanatory, therefore, it is crystal clear that there is no infirmity in the order passed by the Court below. Hence, there is no merit in the civil revision petition. However, this Court gives liberty to the petitioners herein to file a fresh suit on the same cause of action. While doing so, the period of limitation spent by the petitioners before the Court below as well as before the revisional Court may be excluded under Section 14 of the Limitation Act. It is also made clear in the event of petitioner files an application to receive additional written statement, the same may be disposed of according to law.



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9. In the result, this Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District Munsif Court,
Dindigul.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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