



C.R.P.(MD).No.32 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 17.07.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

C.R.P.(PD)(MD)No.32 of 2019

and

C.M.P(MD) No.152 of 2019

R.Bhubanesh Raja

... Petitioner/Petitioner/Defendant

-vs-

R.Edwin

... Respondent/Respondent/Plaintiff

**PRAYER:** Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the learned Additional District Munsif, Padmanabapuram in I.A.No.342 of 2018 in O.S.No.112 of 2018, dated 09.11.2018, and allow the same.

For Petitioner : Mr.M.Suresh

For Respondent : Mr.V.M.Bala Mohan Thambi

**ORDER**

The present Civil Revision Petition has been filed by the petitioner under Article 227 of Constitution of India, to set aside the fair and decreetal



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order passed by the learned Additional District Munsif, Padmanabapuram in I.A.No.342 of 2018 in O.S.No.112 of 2018, dated 09.11.2018, and allow the same.

2. The revision petitioner is the defendant before the trial Court. The respondent/plaintiff has filed a suit in O.S.No.112 of 2018 for a permanent injunction restraining the defendant, men, agents and servants and others from evicting and dis-possessing the plaintiff from the suit property, except under due process of law. While the suit was pending, the defendant/ landlord has filed an application for rejection of plaint on the following ground:

According to the petitioner/defendant, the plaintiff has not stated about the subsistence of tenancy in the plaint. He would further submits that instead of submitting the materials that there is subsisting tenancy agreement in his favour, he vaguely stated that the plaintiff has spent enormous money in developing the shop, and according to the petitioner such a pleading is not enough to make cause of action. Therefore, the petitioner/defendant prayed to reject the plaint on the ground of absence of cause of action.



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3. However, in the counter statement, the defendant pleaded about the subsistence of tenancy and he has also stated about the quantum of monthly rent at Rs.5,000/- (Rupees Five Thousand only) per month. It is also further submitted that the defendant has issued notice under Section 106 of the Transfer of Property Act. Therefore, would submit that the rejection of plaint application is liable to be dismissed.

4. The learned trial Judge, dismissed the application on the ground that while considering the application for rejection of plaint, only plaint averments and the plaint documents alone to be considered, and not beyond that. Apart from that, the learned trial Judge also referred to various other judgments in respect of the tenancy and also found that the very ground namely, the absence cause of action is question of fact, hence the same cannot be decided in the application filed under Order 7 Rule 11 of C.P.C.

5. Aggrieved with the order of the learned trial Judge, the petitioner has come forward with this application and the learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in Appeal



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(Civil) 1855 – 1856 of 2004 (***Shipping Corporation of India Ltd., Vs.***

***Machado Brothers & others***) reading as follows:

*“No Interlocutory order will survive after the original comes to an end. This is a well established principle in law as could be seen from the judgment of this Court in Kavita Trehan (Mrs.) & another vs. Balsara Hygiene Products Ltd. (1994 5 SCC 380) wherein it is held:*

*“Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible”.*

*Therefore, in our opinion, the courts below erred in continuing an infructuous suit just to keep the interlocutory order alive which in a manner of speaking amounts to putting the cart before the deed horse.”*

6. The learned counsel for the petitioner by relying the above judgment would contend that the infructuous suit shall put to an end by rejecting the plaint.

7. However, the learned counsel for the respondent would submit that the plaint categorically mentioned about the cause of action, and that on the



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harmonious reading of the plaint pleadings, reveals the cause of action, therefore, would contend that the instant application is liable to be dismissed.

8. This Court has given anxious consideration to the submissions of the learned counsel on either side.

9. From the harmonious reading of the plaint, what emerges is that, the defendant leased out the suit property to the plaintiff with effect from 13.09.2016, and it was also stated that the plaintiff has been in occupation of the same by paying the monthly rent without default, and also the bi-monthly electric consumption charges was paid by himself. It is also the submission of the plaintiff that in pursuance of the oral tenancy, he has made a security deposit of rupees one lakh on demand to the defendant. He also pleaded in the plaint that he has invested more than lakh of rupees for running the business. The plaintiff has also mentioned in the plaint that only because of the subsequent strained relationship, he has constrained to file the instant suit.

10. From the above pleadings, this Court finds the existence of cause of action to file a suit. Though, as rightly pointed out by the learned counsel for



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the petitioner, such cause of action has not been pleaded in so many words as expected by the petitioner, that doesn't extend to the petitioner, as a ground to reject the plaint. Further, the ruling relied by the learned counsel for the petitioner is not arising out of Order 7 Rule 11 of C.P.C.

11. Therefore, this Court is of the firm opinion that the trial Judge after gone into the pleadings within the frame work of Order 7 Rule 11 of C.P.C, had arrived at a right conclusion. Therefore, I do not want to interfere with the impugned order.

12. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

**17.07.2023**

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

1. The Additional District Munsif,  
Padmanabapuram.



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**C.KUMARAPPAN,J.**

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