



C.R.P(MD).No.1054 of 2023

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

DATED : 19.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**C.R.P(MD).No.1054 of 2023  
and  
Crl.MP(MD)No.4965 of 2023**

1.S.Pandiyan

2.P.Parameshwari

... Petitioners/petitioners/Defendants

Vs.

M.Palanisuresh

... Respondent/Respondent/Plaintiff

**PRAYER:-** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the fair and decreetal order passed in I.A. No:1 of 2022 in O.S.No:58 of 2019 on the file of the Principal District Judge, Dindigul dated 12.01.2023 and reject the plaint under Order VII rule 11 of the Code of Civil Procedure.

For petitioners : Mr.V.Chandrasekar

**ORDER**

This Civil Revision Petition has been filed by the petitioners to set aside the fair and decreetal order passed in I.A. No:1 of 2022 in O.S.No:58 of 2019 on the file of the Principal District Judge, Dindigul dated 12.01.2023 and reject the plaint under Order VII rule 11 of the Code of Civil Procedure.



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2.The petitioners are the defendants before the District Court, Dindigul in O.S.No.58 of 2019 filed by the respondent herein. The suit has been filed by the respondent herein to direct the petitioners to pay a sum of Rs.17,15,225/- together with the subsequent interest 18% per annum of Rs.11,50,000/- from the date of plaint till the date of realisation. It appears that the suit was filed by the respondent on 22.06.2018 with the Court Fee of Rs.100/- as against Rs.51,456.75. Since deficit Court fee was not paid, the plaint appears to have been returned on 25.06.2018. The four weeks time granted for compliance would have expired on 23.06.2018. However, the plaint was represented only on 11.03.2019 when the deficit Court fee was paid by the respondent.

3.It is further submitted that without obtaining permission of the Court under Section 149 of CPC, the suit ought not have been numbered by the Trial Court. It is submitted that the Trial Court ought to have ordered notice on the petitioners before accepting the Court fee and numbering the plaint. It is admitted that the petitioners have already filed their written statement and thereafter filed I.A.No.1 of 2022 under Order VII Rule 11 (C) of CPC for rejecting the plaint as time barred.



4.The learned counsel for the petitioners has drawn attention to decision of the Division Bench of this Court in **K.Natarajan Vs. P.K.Rajasekaran** in A.S.No.375 of 1989 dated 30.04.2003. It is submitted that the Trial Court has dismissed the application filed by the petitioners on totally different ground. Hence, the impugned order was liable to be set aside.

5.I have considered the argument advanced by the learned counsel for the petitioners and I have perused the copy of the plaint and the impugned order passed by the learned Principal District Judge, Dindigul while dismissing I.A.No.1 of 2022.

6.The cause of action paragraph in the plaint filed by the respondent reads as under:-

*“XIV) The cause of action for the suit arose on 23.02.2015 when the plaintiff and defendants entered into a sale agreement with agreed amount of sale consideration of Rs.18,00,000/- which was registered and a sum of Rs. 5,00,000/- received as advance by the defendants from the plaintiff and on 08.04.2015, 04.08.2015, 19.08.2015, 21.09.2015, 28.09.2015 when the defendants especially the first defendant received the balance sale consideration part by part in installments and the plaintiff had a settlement talk with the defendants when they demanded more sale consideration and refuse to execute sale deed when the defendants issued a lawyer notice to the plaintiff and on 15.02.2015 when the plaintiff sent a reply notice and when the defendants refused to settle the mortgage amount along*



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*with the plaintiff and on 26.05.2016 when the plaintiff sent a lawyer notice to the defendants and on 03.06.2016 defendants sent a vexatious reply notice and all other subsequent days when the plaintiff approached the defendants to execute the sale deed and demanding of payment of money paid to be defendants and on 12.03.2018 when the defendants filed an injunction suit against the plaintiff all at Dindigul district which is within the jurisdiction of this Hon'ble Court.*

*It is prayed that this Hon'ble Court may be pleased to pass a decree and judgment in favour of the plaintiff."*

7. Reading of the above, *prima facie* indicates that the petitioners had issued the legal notice on 15.02.2016. Followed by another legal notice dated 26.05.2016 which was replied back by the respondent on 03.06.2016. It would be the case of the petitioners that limitation for filing the suit would have expired from the last date of the payment i.e., 28.09.2015 within 3 years i.e., 28.09.2018. The suit was filed on 22.06.2018 with a deficit Court fee.

8. In my view, limitation is a mixed question of fact in law. *Prima facie* it appears that the parties were in dialogue, in as much as, legal notice was issued and replied back and therefore, it cannot be inferred that the limitation expired on 28.09.2018. It appears that the limitation would have expired on 03.06.2019. If the decision of the Court made in **K.Natarajan Vs. P.K.Rajasekaran** is applied, the respondent was not required to obtain leave



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to pay Court fee as the limitation would have expired only on 03.06.2019.

Whereas, the Court fees was paid on 11.03.2019 which is atleast 3 months prior to the expiry of limitation. Therefore, *prima facie*, I do not find any merits in the present Civil Revision Petition. At the same time, the observations made by the Trial Court while dismissing the application are not sustainable. They touch on the merits of the case. These are the matters ought to be decided at the time of argument after the trial is completed. Likewise, content in the order as the limitation is concerned is also to be reexamined at the time of final argument. The observation made in this order is based on *prima facie* that the application filed for rejection of plaint on the ground of limitation without merits. As mentioned above, limitation is a mixed question of fact in law and therefore, it cannot be decided in an interlocutory stage.

9. Therefore, this Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**19.04.2023**

NCC : Yes/No  
Index : Yes/No  
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C.SARAVANAN,J.

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To

- 1.The Principal District Judge,  
Dindugal.
- 2.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

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