



CRP (MD) No.1178 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	19.07.2023
Pronounced on	10.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1178 of 2023

and

C.M.P(MD)No.5694 of 2023

Rajamarthandan

... Petitioner

Vs.

Gayathiri

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the orders made in I.A.No.2 of 2022 in O.S.No.43 of 2020, dated 04.01.2023, on the file of the District Munsif Cum Judicial Magistrate Court, Ilayangudi.

For Petitioner : Mr.R.Murali

For Respondent : Mr.S.Srinivasa Raghavan



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ORDER

The above revision petition is filed as against the order made in I.A.No.2 of 2022 in O.S.No.43 of 2020, dated 04.01.2023, on the file of the District Munsif cum Judicial Magistrate's Court, Ilayangudi.

2. According to the revision petitioner, the revision petitioner is the first defendant in the above suit in O.S.No.43 of 2022. The above suit is filed by the respondent/plaintiff for the relief of permanent injunction against the defendants. During the pendency of the suit, the petitioner/first defendant has preferred an application in I.A.No.2 of 2022 under Order 8 Rule 9 CPC to file the counter-claim on the side of the petitioner/first defendant. However, the petition was dismissed by the Court below by stating that the application is filed belatedly. Against the said order, the present revision petition is preferred.

3. The learned counsel appearing for the revision petitioner would contend that the petitioner/first defendant is having a right to make a



counter-claim before the evidence of the defendant is concluded. He would further submit that the counter-claim for mandatory injunction is based on the specific stand taken in the written statement by the petitioner/first defendant and also based on the factual findings of the Advocate Commissioner's Report and therefore, the findings rendered by the trial Court while dismissing the application, are against the provision of Order 8 Rule 6(A) of CPC. Hence, the petitioner/first defendant was constrained to file the above revision. The learned counsel would further submit that for advancing cause of justice and avoiding multiplicity of proceedings, an embargo is on the belated filing of the written statement and time limit for filing a counter-claim and setoff is not explicitly provided. To support his contention, he relied upon the decision rendered in **2019 0 Supreme(SC) 1280**. He would further contend that due to COVID-19 pandemic situation, the petitioner was unable to file the counter-claim in time and therefore, the delay in filing the petition to accept the counter-claim is covered by the relaxation granted by the Hon'ble Supreme Court, by its order, dated 10.01.2022.



4. Though the respondent has not filed any objection to the petition filed by the petitioner for accepting the counter-claim before the trial Court, the learned counsel for the respondent in this revision petition would contend that the trial Court has rightly dismissed the application, which calls for no interference.

5. Having considered the above judgment and the judgment of the Hon'ble Apex Court and this Court on counter-claim, it is concluded that it is not mandatory for a counter-claim to be filed along with the written statement. The Court, in its discretion, may allow the counter-claim to be filed after the filing of the written statement in exceptional circumstances. According to the revision petitioner, due to COVID-19 pandemic situation he was unable to file the counter-claim in time. In view of that exceptional circumstances, the trial Court ought to have permitted him to file the counter-claim after the written statement has been filed, moreover till the stage of commencement of recording the evidence on behalf of the plaintiff. Further, counter-claim has been preferred by the petitioner based on the specific plea in the written statement and on the factual findings of the



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Advocate Commissioner's Report. Therefore, the findings of the trial Court that the defendant has not made any averments in the written statement and dismissing the petition by stating that the counter claim has been filed belatedly, are liable to be set aside.

6. In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.2 of 2022 in O.S.No.43 of 2020, dated 04.01.2023, on the file of the District Munsif cum Judicial Magistrate, Ilayangudi, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2023

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

The District Munsif Cum Judicial Magistrate Court,
Ilayangudi.

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