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C.R.P(MD)No.1896 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1896 of 2023

C.R.Tamilvanan

... Petitioners/Petitioner/Plaintiff

Vs.

1.K.Duraisamy
2.Sriram Equipment Finance,
Company Ltd., Through its
Branch Manager,
Theerthamalai Complex,
Salem.

... Respondent/Petitioner/Defendant

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order passed in I.A.No.1 of 2022 in O.S.No. 16 of 2016 dated 07.03.2023 on the file of the Additional Subordinate Court, Dindigul.

For Petitioner

:Mr.H.Elango

ORDER

This civil revision petition is filed as against the order dated 07.03.2023 passed in I.A.No.1 of 2022 in O.S.No.16 of 2016, by the Additional Subordinate Court, Dindigul.



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2. According to the revision petitioner, he is doing granite business and for shifting the granite stones, he purchased TATA HITACHI EX350 LCH Super Machine from the first respondent/1st defendant by way of an agreement, dated 16.05.2014. An agreement was executed for consideration of Rs.32,00,000/- and payable in twenty installments. Thereafter, the petitioner/plaintiff has paid an advance amount of Rs.9,00,000/- to the first respondent through a cheque bearing Cheque No.579374 drawn on the Bank of Baroda, Dindigul Branch and the same was deposited to his credit. Subsequently, on 03.06.2014 the petitioner/plaintiff paid another sum of Rs. 1,29,150/- by way of cheque drawn from the Bank of Baroda, Krishnagiri, in Cheque No.579375. Thereafter, on 14.07.2014, the petitioner paid a sum of Rs.1,29,150/- by way of cheque. On 04.08.2014, he paid a sum of Rs. 1,29,150/- by way of cheque.

3. After paying the full amount to the first respondent/first defendant, the first respondent failed to hand over the HITACHI machine to the petitioner/plaintiff by violating the agreement. On several occasions, the petitioner/plaintiff approached the first respondent to hand over the machine. However, the first respondent refused to hand over the machine as well as the original documents to the petitioner. While so, the petitioner was transporting the HITACHI Machine for shifting the granite stones to Tamil



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Nadu from Andhra Pradesh, all of a sudden, the first respondent/second defendant confiscated the HITACHI Machine with the help of goondas, on 11.05.2016 by impersonating himself as Deputy Superintendent of Police.

Now, the machine is kept rusty at a place within the jurisdiction of Sooramangalam Police Station, Salem District, for which, the petitioner has preferred a complaint before the Sooramangalam Police Station. Based on which, a case has been registered in Crime No.386 of 2016.

4.Further, it is stated that the machine is kept under the control of the first respondent from the year 2016. The petitioner had approached the first respondent on several occasions to hand over the machine and return back the original documents. But, the first respondent refused to hand over the machine. Hence, the petitioner was constrained to file the above suit in O.S.No.16 of 2016 for permanent injunction. Thereafter, he filed an application in I.A.No.1 of 2022 for recovery of money in the above suit, for the cost of the suit vehicle.

5.The trial Court, on perusal of the averments made in the petition and the arguments advanced by the respective counsel, dismissed the above petition by stating that the petitioner/plaintiff has sought for refund of sale price after a lapse of 6 years, which is barred by limitation.



6.Heard the learned counsel appearing for the petitioner and perused the records available.

7.The petition in I.A.No.1 of 2022 was filed by the petitioner/plaintiff seeking the prayer to amend the suit by including the relief of recovery of money. The suit was earlier filed only for the relief of permanent injunction and the petitioner/plaintiff sought amendment by filing an application under Order VI Rule 17 C.P.C., to amend he plaint for the relief of refund of sale price. Admittedly, the said prayer was sought for after a lapse of 6 years from the date of filing the suit and the period of limitation for filing the suit being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accrued to the respondent.

8.Therefore, this Court hopes that granting of amendment was barred by limitation. Therefore, there is no infirmity or irregularity in the order passed by the trial Court.



9. With the above observation, this civil revision petition is dismissed.

No costs. However, the petitioner is at liberty to take any appropriate action for the relief sought for therein before the appropriate forum.

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NCC: Yes/No

Index: Yes/No

Internet: Yes/No

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To

1. The Additional Subordinate Court,
Dindigul.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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