



C.R.P(MD)No.1331 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1331 of 2023

1.Subash Chandrabose

2.Rajendran

3.Sudhan

4.Hariharan

...Petitioners/Plaintiffs

Vs.

1.Subramanian

2.Devika

3.Sambantham

4.Subha

...Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to direct the Subordinate Judge, Pattukkottai to number the plaint in O.S.SR.No.6132 of 2022 which was returned on 23.09.2022 and take it on file and proceed in accordance with law.

For Petitioner : M/s.J.Anandhavalli



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ORDER

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The present Civil Revision Petition has been filed to direct the learned Subordinate Judge, Pattukkottai to number the plaint in O.S.SR.No.6132 of 2022, which was returned from time to time for compliance by the petitioner pointing certain defects.

2. Prima facie, the petitioner has complied with all the defects pointed out by the Court.

3. In this connection, the learned counsel for the petitioner placed on the decision of this Court in the case of ***Selvaraj Vs Koodankulam Nuclear Power Plant India Limited represented through its Project Director*** reported in (2021) 4 CTC 539, wherein, this Court held as under:

50. To sum up, the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint- averments even prior to its institution.

51. In S. Parameswari v. Denis Lourdusamy, [(2011) 5 CTC 742], this Court had held that after one return, the Court



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should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his/her rights. In Muthuganesah v. Thillaimani, [2016- 2- LW 340], this Court had pointed out:

“3.The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason.”

52. This Court only adds a rider to it: In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in S. Parameswari v. Denis Lourdasamy, [(2011) 5 CTC 742] and post the matter before Court, with or without



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the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised."

4. In view of the above, the present Civil Revision Petition stands allowed at the time of admission after dispensing with notice on the respondents as no adverse orders are proposed to be passed against the respondents by directing the learned Subordinate Judge, Pattukkottai to number the suit as expeditiously as possible preferably within a period of one week from the date of receipt of copy of this order and proceed thereafter in accordance with law. No costs.

13.06.2023

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

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Note: Registry is directed to return the original impugned order to the learned counsel for the petitioner.

To



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1.The learned Subordinate Judge,
Pattukkottai

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

C.SARAVANAN,J.

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