



C.R.P(MD)No.1485 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **28.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1485 of 2023

and

C.M.P(MD)No.7368 of 2023

1.J.Suganthi

2.J.Madhav Chakra

3.Laxshana

...Petitioners/Petitioners/
Defendants 1 to 3

Vs.

1.A.Palanivelrajan

...1st Respondent/
1st Respondent/
Plaintiff

2.A.Ravi

3.M/s. Rathna Exports,
Office at 10-2-10,
High School Road,
Pattiveeranpatti,
Dindigul-624 211.

4.Tamilnadu Mercantile Bank Limited,
Dindigul Branch,
No.9, Salai Road,
Dindigul-342 001.



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5. The State Bank of India,
Ayyampalayam,
Dindigul District.

...Respondents 2 to 5/
Respondents 2 to 5/
Defendants 4 to 7

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.04.2023 passed in I.A.No.02 of 2023 in O.S.No.224 of 2019 on the file of the Principal District Court, Dindigul.

For Petitioners : Mr.M.Kannan

For R1 : Mr.T.S.R.Venkatramana
Senior Counsel
For M/s.T.Uma Maheswari

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order dated 25.04.2023 passed in I.A.No.02 of 2023 in O.S.No.224 of 2019 on the file of the Principal District Court, Dindigul.

2. The petitioners are the defendants 1 to 3 in O.S.No.224 of 2019 filed by the first respondent herein. In the suit along with the petitioners, the respondents 2 to 5 are the other defendants. The suit was filed by the first respondent to recover money that was allegedly due from late.Jeyachandran, husband of the first petitioner and the father of the petitioners 2 and 3.



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3. The facts on record indicate that the petitioners, the second respondent and late.Jeyachandran were the partners of the third respondent and in connection with the business of the said Rathna Exports, the plaintiff appears to have claim for some money. Late.Jeyachandran had allegedly executed a promissory note. The suit precedes a pre-suit notice which was followed by the reply by the petitioners dated 09.09.2019. In the reply dated 09.09.2019 to pre-suit notice dated 20.08.2019, the petitioners have stated as follows:

"6. Our client states that the averments in paragraphs 6,7 and 8 are denied as false and your client is put to strict proof of the same. Moreover, our client was shocked to see your legal notice and has reasons to believe that your client may be using and/or forging an instrument to extort money also in the absence of our client's husband who might have entrusted them in good faith and had passed away without any debt whatsoever also towards you. our client further state that the averments in paragraphs 9 and 10 are false and your client is put to strict proof of the same."

4. After the suit was filed, the petitioners have also filed a written statement wherein, they have disputed the liability under the promissory notes dated 02.01.2014 for Rs.5,00,000/- each.



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5. In the written statement, the petitioners have stated as follows:

"5. It is humbly submitted that averments made by the plaintiff in paragraph 6 are denied as false and more so are concocted stories made up in furtherance of the said coercive tactics to extort moneys from the 1st, 2nd and 3rd defendants when the real fact is that the said partnership firm/5th defendant was facing losses due to the cash crunch situation created by the double standards of the plaintiff and his brother/4th defendant. More so, the 1st, 2nd and 3rd defendants have no liabilities towards the plaintiff or his brother/4th defendant whatsoever.

7. It is submitted that paragraphs 9 and 10 in the plaint have enlisted the dates of payments made by the plaintiff to the 6th defendant but have conveniently suppressed the real facts and circumstances that had surrounded the transactions, that which are clearly explained in previous paragraphs of this instant written statement. The plaintiff has twisted facts to suit his concocted story to extort moneys and more so the 1st, 2nd and 3rd defendants do not have any liabilities towards the plaintiff.

8. It is submitted that paragraph 11 is denied as false and frivolous whereas the plaintiff is using the absence of (late)Mr.Jeyachandran to extort moneys and more so is putting undue pressure on the 2nd defendant, who was a minor at the time of the said partnership firm/5th defendant and having nothing to do with the aforementioned losses, is not liable to pay the plaintiff or any other person anything whatsoever and more so he has the right to earn his livelihood without undue pressure and unlawful threats from the plaintiff."

6. After the commencement of trial and at the time of examination of the first respondent, petitioner filed an application in I.A.No.2 of 2023



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under Order 8 Rule 19 of C.P.C. to file additional written statement which has been rejected by the trial Court.

7. The learned counsel for the petitioner submits that there is no bar under law for taking inconsistent plea and that in this connection drew attention to the Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and others Vs Kiran Appaso Swami and others*** reported in (2002) 5 SCC 602. The relevant portion of the order reads as under:

"19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable."

8. The learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. It is submitted that the petitioners could not have asked for an amendment of the pleading under Order 6 Rule 17 of C.P.C., after the trial has



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commenced. That apart, it is submitted that the question of filing an additional written statement under Order 8 Rule 9 is permissible only by way of defence to set off on counter claim. It is submitted that no pleading to the written statement of the defendants shall be presented except to the leave of the Court.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

10. The petitioners were entitled to amend the written statement under Order 8 Rule 17 of C.P.C. Having missed the opportunity to amend the written statement, the petitioners had filed application under Order 8 Rule 9 of C.P.C. The petitioners are not entitled has to file additional written statement under Order 8 Rule 9 of C.P.C. The attempt of the petitioner appears to be merely to prolong the litigation after the trial commenced. Therefore, the application has been rightly rejected by the Court. The impugned order does not call for any interference. All the defences taken by the petitioner in the reply to the legal notice and in the additional written statement are covered by the written statement already filed. Therefore, no useful purpose will be served by allowing the petitioner to file an additional written statement except to prolong the



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longevity of the litigation. All the defences available in law to the petitioners can be canvassed before the Court by the petitioners at the time of final arguments based on the averment in the written statement already on record.

11. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2023

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

1.The Principal District Court,
Dindigul.

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



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C.SARAVANAN,J.

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