



CRP(MD)No.952 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.10.2023**

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THE HONOURABLE **MR.JUSTICE P.B. BALAJI**

C.R.P.(MD)No.952 of 2018

Anna Roch

...Petitioner

/Vs./

Mercy

...Respondent

PRAYER:- Petition - filed under Article 227 of the Constitution of India, to set aside the order of return dated 07.04.2018 in O.S.SR No.6296/2017 on the file of the Subordinate Judge, Valliyoor, Tirunelveli District and direct the Subordinate Judge, Valliyoor, Tirunelveli District to number the suit and proceed in accordance with law.

For Petitioner : Mr.C.T.Perumal

For Respondent : No appearance

ORDER

This civil revision petition has been filed challenging the order of return dated 07.04.2018 in O.S.SR No.6296/2017 on the file of the Subordinate Judge, Valliyoor, Tirunelveli District and consequently seeking for a direction to number the same.



CRP(MD)No.952 of 2018

2. The revision petitioner as the plaintiff has filed a suit against his sister, who is arrayed as defendant in the suit for recovery of money for a sum of Rs.8,23,818/- together with interest at 12% per annum, which has not yet been numbered. The parties are described as per the litigative status in the suit.

3. It is the case of the plaintiff that the defendant has committed breach of trust and misappropriated the plaintiff's funds. A pre suit notice has also been issued to the defendant on 24.05.2017 stating that the aforesaid amount has become due and payable to the plaintiff. Since the defendant refused to receive the notice, the plaintiff filed a suit before the Subordinate Judge, Valliyoor, Tirunelveli District.

4. However, the trial Court has returned the plaint seeking explanation on 15.09.2017 as to how the defendant is liable for repayment of the amount mentioned in the plaint; under which provisions of law, the plaintiff is entitled to recover the amount; since the amount mentioned in the plaint is in the bank account of the defendant, how the plaintiff is entitled to the money to be explained. The revision petitioner has complied with the said returns. However, the trial Court has repeatedly returned the suit for plaint for compliance of the very same returns that were originally raised on 15.09.2017.



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5. I have heard Mr.C.T.Perumal, learned counsel appearing for the petitioner and perused the materials placed before this Court.

6. I do not find it necessary for a plaintiff to undergo an ordeal even before numbering of the suit. There are sufficient averments and allegations in the plaint indicating as to how and why the money is to be recovered from the defendant. The pre suit notice is also filed as one of the suit documents, which has been unserved. It is for the defendant to appear and set up her defence in the suit, after service of summons and the Registry cannot file a vakalat for the defendant, even before the suit is numbered.

7. Considering the aforesaid facts and circumstances of the case, I am of the opinion that the trial Court has erroneously returned the plaint calling upon the plaintiff to virtually try the suit even before its numbering. The said procedure is not contemplated under the Code of Civil Procedure. Registry is not entitled to call upon the plaintiff to explain and prove as to how he is entitled to the money mentioned in the suit from the defendant.



CRP(MD)No.952 of 2018

8. On perusing the materials placed before this Court, ie., the entire plaint as well as the pre suit notice, it is for the plaintiff to succeed or fail on the strength or weakness of his allegation set out in the plaint and discussed hereinabove. The Registry cannot refuse to number the suit on the grounds. Hence, the plaintiff / revision petitioner is entitled to the relief and the trial Court namely Subordinate Judge, Valliyoor, Tirunelveli District is directed to number the suit and proceed in accordance with law. Registry of this Court shall return the original plaint to the petitioner to enable him to represent the same before the Subordinate Judge, Valliyoor, Tirunelveli District along with a copy of this order passed in this civil revision petition.

9. This civil revision petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

30.10.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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Note: Registry shall return the original plaint to the learned counsel for the petitioner.



CRP(MD)No.952 of 2018

TO:-

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- 1.The Subordinate Judge, Valliyoor,
Tirunelveli District.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CRP(MD)No.952 of 2018

P.B. BALAJI, J.

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Order made in
C.R.P.(MD)No.952 of 2018

Dated:
30.10.2023