



CRP(MD).No.1281 to 1285 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CRP (MD).Nos. 1281 to 1285 of 2018 and
CMP(MD).Nos.5377 to 5381 of 2018

1.The President,
Tiruchirapalli Co-operative House Construction Society Ltd.,
R-786,
Tiruchirapalli. - 620 018

2.The Secretary,
Tirichirapalli Co-operative House Construction Society Ltd.,
R-786,
Tiruchirapalli.

Petitioners in both CRPs

Vs.

J. Santhi	Respondent in CRP(MD).No.1281 / 2018
Karunanithi	Respondent in CRP(MD).No.1282 / 2018
M.Pitchaiammal	Respondent in CRP(MD).No.1283 / 2018
M.Marudambal	Respondent in CRP(MD).No.1284 / 2018
S. Girija Sundaram	Respondent in CRP(MD).No.1285 / 2018

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of
the Constitution of India against the fair and decreetal order made in



CRP(MD).No.1281 to 1285 of 2018

I.A.Nos.316, 317, 318, 319 and 320 of 2017 in O.S.Nos.486, 489, 492, 495 and 498 of 2017, dated 07.02.2018 on the file of the I Additional Subordinate Court, Trichy and set aside the same.

For Petitioners : Mr.M. Senthil Ayyanar

Government Advocate

For Respondents : Mr. Shankar Murali

ORDER

The revision petitioners herein are the respondents / defendants before the Court below. The respondents herein are the petitioners / plaintiffs before below.

2. For the sake of convenience, the parties are referred according to the litigative status before the Trial Court.

3. The brief facts of the case which give rise to the instant Civil Revision Petitions are that the respondents / plaintiffs have filed a suit for the relief of declaration declaring the impugned notice, dated 05.04.2017 issued by the 1st defendant qua, the President, Tiruchirapalli Co-operative



CRP(MD).No.1281 to 1285 of 2018

House Construction Society Ltd., Tiruchirapalli. - 620 018 as null and void and un-enforceable in law and also for the specific performance of the allotment order, dated 18.05.2001.

4. In the said suit, the petitioners / plaintiffs herein has moved an application under Order 39 Rule 1 CPC seeking temporary injunction. The Court below after considering the submissions of either side, has ultimately allowed the applications of the plaintiffs and granted an injunction under Order 39 Rule 1 and 2 of CPC vide order, dated 07.02.2018.

5. Aggrieved with the said orders, the revision petitioners are before this Court.

6. The learned Government Advocate appearing for defendants would submit that without considering the prima facie case, balance of convenience and irreparable loss to the plaintiffs, the learned trial Judge has granted an order of temporary injunction and that the same caused irreparable loss to the revision petitioners / defendants. It is the further submission that without there being any merits and supporting documents



CRP(MD).No.1281 to 1285 of 2018

the trial Court granted temporary injunction till the disposal of the suits, which is liable to be set aside.

7. However, the learned counsel appearing for the respondents / plaintiffs objected the arguments of the learned Government Advocate and would submit that, when an appeal remedy is provided for Order 39 Rule 1 CPC, the Civil Revisions Petitions are not maintainable.

8. I have given my anxious consideration to the submissions of the learned counsel appearing on either side and perused the materials available on record.

9. Without going into the merits of the case, this Court deem it appropriate to consider that maintainability of the Civil Revision Petitions. For easy reference, this Court extracted Order 43 Rule 1(r) C.P.C., which reads as follows:

1. Appeals from orders : - An appeal shall lie from the following orders under the provisions of section 104 namely:-

...



CRP(MD).No.1281 to 1285 of 2018

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(r) an order under rule 1, rule 2 (rule –
2A), Rule 4 or rule 10 of Order XXXIX

10. As per the above provision, an appeal is provided to the order passed under Order 39 Rule 1 and 2 CPC.

11. It is settled principle of law that whenever an appeal remedy is available, there cannot be any revision under Article 227 of the Constitution of India. This Court would like to refer the Judgment of the Hon'ble Supreme Court reported in **(2022) 10 SCC 477 (Mohamed Ali Vs. V. Jaya and others)**, wherein the the Hon'ble Supreme Court after following the Judgment of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society** reported in **(2019) 9 SCC 538** held as follows:

“8. At this stage, the decision of this Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors, is required to be referred to. In the said decision, it is observed and held by this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High



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Court shall not entertain the revision under [Article 227](#) of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. While holding so, it is observed and held in paragraphs 11 to 13 as under: (SCC P 542)

*“11. Secondly, the High Court ought to have seen that when a remedy of appeal under [Section 104\(1\)\(i\)](#) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu v. S. Chellappan* [*A. Venkatasubbiah Naidu v. S. Chellappan*, (2000) 7 SCC 695] , this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.*

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the



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CRP(MD).No.1281 to 1285 of 2018

provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under [Article 227](#), even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3member Bench of this Court, while overruling the decision in [Surya Dev Rai v. Ram Chander Rai](#) pointed out in [Radhey Shyam v. Chhabi Nath](#) that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of



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CRP(MD).No.1281 to 1285 of 2018

discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

12. As per the above precedent, it is amply clear that no revision under Article 227 of the Constitution of India is maintainable when an appeal remedy is provided under Order 43 Rule 1(r) against the order passed under Order 39 Rule 1 & 2 CPC. Therefore, this Court is of the view that the present revisions filed under Article 227 of the Constitution of India are not maintainable.

13. The learned Government Advocate fairly conceded the legal position and would pray this Court to grant liberty to prefer Civil Miscellaneous Appeals.

14. Considering the submission of the learned Government Advocate, this Court would like to grant liberty to the petitioners herein if advised, to file appeal under Order 43 Rule 1 (r) within a period of three



CRP(MD).No.1281 to 1285 of 2018

months from the date of receipt of a copy of this order. If doing so the period during which the Civil Revision Petitions are pending, is ordered to be excluded as per Section 14 of the Limitation Act.

15. In the result, these Civil Revision Petitions are **dismissed**.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

16.08.2023

Index : Yes / No
Internet : Yes / No
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To

1. I Additional Subordinate Court, Trichy
2. The Commercial Court, Trichy.



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C.KUMARAPPAN, J.,

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