



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2023**

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2461 of 2022
and
C.M.P.(MD)No.12067 of 2022

A.Dharmaraj

...Petitioner

Vs.

V.Krishnamoorthy

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the impugned order dated 16.08.2022 passed in I.A.No.158 of 2021 in O.S.No.5 of 2021 on the file of the learned Additional District Judge, Virudhunagar District.

For Petitioner

: Mr.V.Muniasamy

For Respondent

: Mr.R.G.Sankar Ganesh

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in I.A.No.158 of 2021 in O.S.No.5 of 2021 dated 16.08.2022, on the file of the learned Additional District Judge, Virudhunagar District.

2.The petitioner is the defendant in O.S.No.5 of 2021 on the file of the District Court, Virudhunagar. The suit has been filed for specific performance of an obligation under an agreement dated 25.11.2012 and for direction to the respondent



to receive balance sale consideration totally to a tune of Rs.34,32,000/-.

WEB COPY

3.The cause of action in the plaint reads as follows:-

“The cause of the action for the suit arose on 25.11.2012 when the plaintiff and the defendant have entered into a sale agreement between themselves, on 12.12.2012, 30.01.2013, 10.01.2013, 30.01.2013, 12.02.2013, 12.02.2013, 14.03.2013, 30.03.2013, 13.06.2013, 08.07.2013, 03.08.2013, 22.08.2013, 25.11.2013, 10.04.2014, 29.05.2014, 07.07.2014, 23.05.2017, 19.04.2020 has paid several amounts totally to a tune of Rs.34,32,000/- on several days when the plaintiff has been demanding the defendant to perform his part of the contract on receipt of the balance sale consideration, on and from 28.10.2020, when the defendant is unlawfully demanding additional amount for performing his part of the contract on 02.11.2020, when the defendant attempted to alienate the suit property illegally in favour of third parties and when the same was resisted by the plaintiff and great efforts, on several dates when the threat of alienation and refusal to perform the part of the contract continues within the jurisdiction of this Honourable Court.”

4.In the suit, after filing the written statement sometime in March 2021, the petitioner as defendant has filed I.A.No.158 of 2021, which has been dismissed by the Court with the following observation:-

“It is also argued that the respondent/plaintiff cannot claim the relief to execute the sale deed and also for permanent injunction and it is not maintainable. It is true that the plaintiff has claimed injunction. Now, the question is whether the suit can be partially



rejected. In answer to this question, the learned counsel for the respondent submitted the following judgments.

(a) Biswanath Banik & Anr v. Sulanga Boss & Ors. Wherein it is held that....

(b) Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd., wherein it is held that ..

From the above judgment, it is seen that the plaint cannot be rejected partially.

12.Moreover, all the allegations in the petition is about the facts of the case. For the purpose of deciding the petition for rejecting of plaint, the Court has to consider only the plaint averments and not the defendant's case. It is seen that on 25.11.2012 the agreement was executed and the petitioner/defendant received payments till 19.04.2019. So, the question to when the period of limitation starts to run has to be decided at the time of trial. There is no merits in the petition. Hence this petition has to be dismissed.”

5.The petitioner is aggrieved by the impugned order rejecting the application filed by the petitioner under Order 7 Rule 11 of CPC and hence, he filed the present civil revision petition.

6.The learned counsel for the petitioner would submit that the obligation taken in the agreement dated 25.11.2012. Therefore, the suit should have been filed within the period of three years from the cause of action but the suit has been filed in the year 2021. That apart it is submitted that the petitioner disputes the averments



in para no.8, which deals with the cause of action in the suit.

WEB COPY

7.The learned counsel for the petitioner also drawn attention to copy of the agreement dated 25.11.2012, wherein there are endorsements regarding the receipt of payment.

8.The learned counsel for the respondent would submit that the impugned order is well reasoned and does not require any interference. It is submitted that law in the subject is very clear. It is submitted that the limitation is a mixed question of law and fact and therefore, the application filed by the petitioner on the ground that the suit is time barred cannot be countenanced.

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

10.The challenge to the impugned order rejecting the application filed by the petitioner under Order 7 Rule 11 of CPC is without any merits. Issue relating to limitation is a mixed question of fact and law, which has to be determined only after the trial at the time of argument. That apart, paragraph no.8 of the plaint indicates that the cause of action continued up to 19.04.2019. Whether there is any truth in the defence of the respondent or not is the matter which to be decided after the trial.

Properly instituted suit cannot be therefore short circuited under Order 7 Rule 11 of



CPC. That apart the law is well settled and the Court is also not expected to look into averments in the written statement or at the evidence which are brought to the table by the defendant for rejecting the plaint.

11.In view of the above, I do not find any reason to interfere in the impugned order. The present civil revision petition is liable to be dismissed and it is accordingly dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

27.06.2023

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

Mrn

To

1.The Additional District Judge, Virudhunagar.

2.The Section Officer

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai.



WEB COPY

C.R.P(MD)No.2461



C.SARAVANAN,J.

Mrn

C.R.P(MD)No.2461 of 2022

27.06.2023