



C.R.P(MD)No.2145 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.2145 of 2019

M.Ravi

...Petitioner

Vs.

M.Sharafitheen Ahamed

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the Principal District Judge, Kanniyakumari, at Nagercoil, to number the unnumbered I.A.No.--- of 2019 in O.S.No.122 of 2012 on the file of the Principal District Court, Kanniyakumari, at Nagercoil and decide the same on merits after numbering the same.



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For Petitioner : Mr.Mohamed Nihal
for Mr.A.Arumugam

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed seeking direction to the Principal District Judge, Kanniyakumari, at Nagercoil, to number the unnumbered I.A.No.--- of 2019 in O.S.No.122 of 2012 on the file of the Principal District Court, Kanniyakumari, at Nagercoil and decide the same on merits after numbering the same

2. Heard Mr.Mohamed Nihal, learned counsel for the petitioner and perused the material available on record. In spite of service of notice, there is no appearance on behalf of the respondent.

3. The learned counsel for the petitioner submits that the petitioner filed a suit in O.S.No.122 of 2012 on the file of the



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Principal District and Sessions Judge, Kanniyakumari District at

Nagercoil, for specific performance of contract and for injunction.

At the time of filing the suit, the petitioner has paid a sum of Rs.7,19,250.50 p. towards Court fees for 'A' relief and Rs.75.50 p. is paid towards Court fees for 'B' relief and thus, he paid a sum of Rs.7,19,350.50 p. in the suit.

4. After filing of the plaint, the defendant in the suit i.e., the State Bank of India filed an application in I.A.No.9 of 2013 to reject the plaint. The said application was allowed in respect of defendants 1 and 2. Thereafter, the petitioner filed an application before the Court to restrict the order of rejection of the plaint in respect of the second respondent alone. The trial Court was refused to register the said application. Dissatisfied with the same, the petitioner filed C.R.P.(MD)No.813 of 2015 before this Court. The said C.R.P.(MD)No.813 of 2015 was disposed of by order, dated 08.06.2015 holding that the plaintiff is not entitled to a decree for specific performance and the plaint has to be suitably amended for



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the relief of recovery of amount only. In compliance of the said order, the plaint was amended by the plaintiff and restricted the suit for recovery of the amount of Rs.40,89,800/-. The plaintiff has to pay only Rs.3,06,735.50 p. as Court fees. But at the time of filing the suit for specific performance and for recovery, he paid Court fees of Rs.7,19,350.50 p. As such the balance Court fees of Rs.4,12,615/- has to be refunded to the plaintiff. Seeking refund of balance Court fee, the petitioner filed an Interlocutory Application before the Principal District and Sessions Judge, Kanniyakumari District at Nagercoil in the year 2019. The said application was returned by the Principal District and Sessions Judge, Kanniyakumari District at Nagercoil, raising objections that under what provision this petition is maintainable at this stage. This endorsement was made on 12.04.2019. It appears that on 15.04.2019, the petitioner resubmitted the said application stating the reasons and enclosing a copy of the order in C.R.P.(MD)No.813 of 2015.



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5. The grievance of the petitioner is that again the said application is returned without passing any judicial order. Aggrieved by the same, the present Civil Revision Petition is filed.

6. Having heard the submissions of the learned counsel for the petitioner and upon careful perusal of the material available on record, it appears that the Court below committed an error by returning the application without numbering the same. Even after re-submission of the said application by the petitioner along with a copy of the order, dated 08.06.2015 in C.R.P.(MD)No.813 of 2015, the learned Principal District and Sessions Judge, Kanniyakumari District at Nagercoil, ought to have disposed of the said application by passing judicial order. But without numbering the Interlocutory Application and without giving opportunity to the petitioner to put-forth their case before the Court below, returning the said application is unreasonable and against law.



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7. For the aforesaid reasons, the Civil Revision Petition is allowed with a direction to the learned Principal District and Sessions Judge, Kanniyakumari District at Nagercoil, to number the unnumbered I.A.SR.No.8712 of 2019 dated 27.03.2019 in O.S.No. 122 of 2012 and grant opportunity to the petitioner to put forth their case by granting personal hearing and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

8. The learned counsel brought to the notice of this Court that the original application in I.A.SR.No.8712 of 2019 dated 27.03.2019 is filed along with the Civil Revision Petition and sought to return those documents to enable him to present in the Court below.

9. Accordingly, Registry is directed to return the original documents filed by the petitioner along with this Civil Revision



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Petition to the petitioner to enable the petitioner to present the same before the Court below.

10. No costs.

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

Note : Registry is directed to return the original document to the petitioner after substituting the same with xerox copy

To

The Principal District & Sessions Judge,
Principal District Court,
Kanniyakumari,
at Nagercoil.



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BATTU DEVANAND, J.

RM

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