



C.R.P.(MD)No.3379 of 2023

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DATED: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3379 of 2023

and

C.M.P.(MD)No.17475 of 2023

1. M/s.S.P.G.Ramasamy Nadar & Sons,
A partnership firm through its
managing partner S.P.G.R.Nithyanandam

2. S.P.G.R.Nithyanandam

3. S.P.G.R.Chandran

... Petitioners

Vs.

S.P.G.R.Mathavan (Died)

1. Vijaya

2. Bhuvaneswari

3. Kavitha
represented through power of attorney R4
Arihara Prabhu

4. Arihara Prabhu

... Respondents

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated



C.R.P.(MD)No.3379 of 2023

12.10.2023 passed in I.A.No.10 of 2022 in O.S.No.54 of 2016 on the file of the Sub Court, Virudhunagar by allowing this Civil Revision Petition.

For Petitioners : Mr.V.Meenakshi Sundaram

For Respondents : Mr.T.Antony Arulraj
for M/s.G.K.Chitradevi

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.10 of 2022 in O.S.No.54 of 2016 dated 12.10.2023 on the file of the Subordinate Court, Virudhunagar, directing the revision petitioners to pay a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) as interim payment and to adjust the same from the amount due to the respondents.

2. The deceased first plaintiff has filed the above suit in O.S.No.54 of 2016 against the revision petitioners/defendants for dissolution of the first revision petitioner/first defendant partnership firm and for direction to the revision petitioners 2 and 3/defendants 2 and 3 to render true and correct accounts of the first revision petitioner/first defendant partnership firm from 2012-2013 till date and to pay the first plaintiff's 1/3rd share in the entire assets after deducting the liabilities. Thereafter, the deceased



C.R.P.(MD)No.3379 of 2023

WEB COPY

first plaintiff has filed an application for appointment of Advocate Commissioner and the trial Court has appointed a retired District Judge as an Advocate Commissioner to peruse the documents with the help of an Auditor and when the same was challenged before this Court in C.R.P. (MD)No.1124 of 2022, this Court, vide order dated 20.07.2022, modified the order passed by the trial Court and appointed an Advocate as a Commissioner and the learned Advocate Commissioner, after perusing the records, has filed a report along with Auditor's report. Pending suit, the first plaintiff had died and his wife and other legal heirs got themselves impleaded as plaintiffs 2 to 5/respondents herein and after their impleadment, they have filed the present application in I.A.No.10 of 2022 alleging that they have not received any profits from the partnership firm for more than three years, that after the death of the first plaintiff, the first respondent/second plaintiff finds it very difficult to run the family and that therefore, they were constrained to file the above application directing the firm and its partners to pay atleast Rs.1 crore from the profit share of the deceased first plaintiff. The revision petitioners/defendants have raised serious objections. The trial Court, after enquiry, has passed the impugned order directing the revision petitioners/defendants to pay a sum of



C.R.P.(MD)No.3379 of 2023

Rs.75,00,000/- (Rupees Seventy Five Lakhs only) as interim payment.

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Aggrieved by the said order, the defendants have preferred the present revision.

3. The learned counsel appearing for the revision petitioners would submit that the application for interim relief of claiming Rs.1 crore under Section 13 of the Indian Partnership Act is not maintainable, when the suit itself is for dissolution of partnership, that the Advocate Commissioner's report along with the Auditor's report filed before the trial Court in I.A.No. 10 of 2022 was already objected by the revision petitioners/defendants and the same was not even marked in the interlocutory proceedings and that therefore, the respondents/plaintiffs 2 to 5 cannot claim any amount on the basis of the Advocate Commissioner's report.

4. The learned counsel appearing for the respondents would submit that the revision petitioners/defendants, in their written statement, have admitted that the deceased first plaintiff was a partner of the firm, that it is not the case of the revision petitioners/defendants that they have paid the deceased first plaintiff's share in the profits, that they have not raised any



C.R.P.(MD)No.3379 of 2023

defence that the deceased first plaintiff is not entitled to get any amount from the profit of the first revision petitioner/first defendant firm, that since the first plaintiff had died, the respondents/plaintiffs 2 to 5, by averring their family situation and their financial constraints, have filed the above application seeking their share in the profits of the first revision petitioner/first defendant firm and that the trial Court has rightly allowed the application.

5. When the matter is taken up for hearing today, the learned counsel appearing for the revision petitioners would submit that though this Court has directed for early disposal of the case, but that period has already lapsed and that therefore, the trial Court may be directed to complete the trial within short time to be stipulated by this Court.

6. The learned counsel appearing for the respondents would submit that the respondents/plaintiffs 2 to 5 are also ready for early trial but the revision petitioners/defendants may be directed to deposit the amount awarded by the trial Court.



C.R.P.(MD)No.3379 of 2023

WEB COPY

7. At this juncture, the learned counsel appearing for the revision petitioners would submit that the revision petitioners/defendants are ready to deposit some portion of the amount if directed by this Court and the learned counsel appearing for the respondents would submit that the respondents/plaintiffs 2 to 5 may be permitted to withdraw the amount.

8. Considering the above facts and circumstances and taking note of the submissions made on either side, the revision petitioners are directed to deposit **Rs.40,00,000/- (Rupees Forty Lakhs only)** into the trial Court within a period of three weeks from the date of receipt of a copy of this order. On such deposit being made, the learned trial Judge is directed to deposit the same in anyone of the Nationalized Bank in short term basis. The learned trial Judge is also directed to complete the trial in O.S.No.54 of 2016 and dispose of the same within a period of three months from the date of receipt of a copy of this order. In case, if the respondents succeeds and get a preliminary decree in their favour, they are entitled to withdraw 50% of the amount deposited by the revision petitioners with interest on filing necessary application before the trial Court and directed to adjust the same in the total amount due to them at the time of passing of final decree.



C.R.P.(MD)No.3379 of 2023

9. With the above directions, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

22.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Issue order copy on 03.01.2024

To

1. The Sub Court,
Virudhunagar.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.3379 of 2023

K.MURALI SHANKAR,J.

csn

Order made in
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and
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Dated : 22.12.2023