



A.Nos.1811 & 1812 of 2020

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N.SATHISH KUMAR, J.

The application in 1811 of 2020 has been filed to withdraw the suit in O.S.No.4820 of 2019 pending on the file of the III Additional City Civil Court, Chennai to the file of this Court to try the same in accordance with law.

2. The suit in O.S.No.4820 of 2019 has been originally filed for recovery of a sum of Rs.10 lakhs on the basis of the promissory note executed by the defendant on 28.08.2018. However, in the written statement, the defendant in the above suit pleaded a counter claim for a sum of Rs.2,70,00,000/- and paid necessary Court Fee. Thereafter, an application has been filed before this Court for withdrawal and transfer of the above suit, since the counter claim raised by the defendant exceeds the pecuniary jurisdiction of the City Civil Court. This Court by an Order dated 29.01.2021 dismissed the application. Challenging the same, an appeal has been filed before the Division Bench of this Court in O.S.A.No.227 of 2021.



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By an Order dated 09.11.2023, the Division Bench of this Court has set aside the Order of the learned Single Judge and remanded the matter back to the learned Single Judge to dispose of the application independently considering the powers of the High Court under Clause 13 of the Letters Patent.

3. Heard both sides.

4. Normally, if a counter claim is raised, the same shall not exceed the pecuniary jurisdiction of the concerned Court as per Order VIII Rule 6A of Code of Civil Procedure. The fact remains in this suit is that the defendant has raised a counter claim for a sum of Rs.2,70,00,000/-. In such case, the City Civil Court ought to have returned the counter claim on the ground of pecuniary jurisdiction. However, it is transpired that the Court Fee for the counter claim has also been received and entertained by the City Civil Court. If the counter claim has been returned and not entertained at the earlier point of time, the applicant would have filed a fresh suit before this Court or concerned Court, which has jurisdiction. Since no such



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opportunity has been given, the applicant/defendant, having paid the Court Fee has come up with this application to withdraw and transfer the suit to this Court.

5. It is relevant to note that raising a counter claim is akin to filing of a suit. Even in the event if the suit is dismissed, counter claim has to be decided independently. Such being the position, if the counter claim has been returned or not entertained at the earlier point of the time, the defendant would have filed a fresh suit within the limitation period before the Court, which has got jurisdiction to try such an issue. Such a right has been taken away on account of the mistake committed by the Court. Therefore, this Court is of the view that though the Court cannot entertain the counter claim exceeding the pecuniary jurisdiction of the particular Court, since the counter claim has already been entertained and necessary Court Fee has also been received, this can be cured by transferring the suit to this Court, which has got pecuniary jurisdiction over the counter claim.



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6. Clause 13 of the Letters Patent reads as follows :

“13. Extraordinary original civil jurisdiction - And we do further ordain that the said High Court of Judicature at Madras shall have power to remove and try and determine, as a Court of Extraordinary Original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the High Court.”

When such power is already vested with this Court under the Letters Patent, merely because a counter claim exceeding the pecuniary jurisdiction of this has been filed and entertained by the City Civil Court, the rights of the applicant/defendant to establish his right cannot be defeated before this Court. In such view of the matter, this Court is of the view that the petitioner is entitled to succeed in this application.



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7. Accordingly, the application in A.No.1811 of 2020 is Ordered and the suit in O.S.No.4820 of 2019 is withdrawn from the file of the III Additional City Civil Court and transferred to this Court for trial . The III Additional City Civil Court is directed to transfer the entire suit bundle along with all the applications pending in the suit to this Court. Consequently, the application filed in A.No.1812 of 2020 filed to stay all further proceedings in O.S.No.4820 of 2019 is closed.

22.01.2024

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