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C.R.P.(PD)Nos.1090 & 1740 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.1090 & 1740 of 2024
and C.M.P.No.5670 of 2024

C.R.P.(PD)No.1090 of 2024

R.Nandakumar

.. Petitioner

Vs

M/s.Senthil Andavar Textiles,
Represented by its Managing Director,
K.R.Selvakumar
S/o.K.Rangasamy,
Having Office at S.F.No.99,
Selaiyur, Vadugapalayam,
Vagarayampalayam via, Coimbatore – 641 107.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.02.2024 passed in I.A.No.2 of 2024 in C.O.S.No.148 of 2023 on the file of the Commercial Court (District Judge Cadre), Coimbatore.



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C.R.P.(PD)Nos.1090 & 1740 of 2024

For Petitioner : Mr.S.Silambanan, Senior Counsel
for Mr.K.Vasanthanayagan

For Respondent : Mr.N.Sridhar
for Mr.R.Bharathkumar

C.R.P.(PD)No.1740 of 2024

1. M/s.Senthil Andavar Textiles,
Represented by its Managing Partner,
K.R.Selvakumar
Having Office at S.F.No.99,
Selaiyur, Vadugapalayam,
Vagarayampalayam via, Coimbatore – 641 107.

2. K.R.Selvakumar

3. K.Rangasamy

4. K.R.Dheenadayalan

.. Petitioners

vs.

M/s. Annur Sri Sivasakthi Cotton Mills Pvt. Ltd.,
Represented by its Managing Director,
R.Nandakumar,
Having Office at No.112/1-H,
Sathy Main Road, Opp. to market committee,
Annur, Coimbatore-641 653.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated 09.01.2024
passed in I.A.No.3 of 2023 in C.O.S.No.40 of 2023 on the file of the
Commercial Court (District Judge Cadre), Coimbatore.



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C.R.P.(PD)Nos.1090 & 1740 of 2024

For Petitioners : Mr.N.Sridhar
for Mr.R.Bharathkumar

For Respondent : Mr.S.Silambanan, Senior Counsel
for Mr.K.Vasanthanayagan

COMMON ORDER

Both the civil revision petitions in C.R.P.(PD)Nos.1740 & 1090 of 2024 challenge the order passed by the learned Commercial Court (District Judge Cadre), Coimbatore in I.A.No.3 of 2023 in C.O.S.No.40 of 2023 & I.A.No.2 of 2024 in C.O.S.No.148 of 2023, dated 09.01.2024 & 12.02.2024, respectively.

2. Both the suits are transferred proceedings before the learned Commercial Court at Coimbatore.

3. For the sake of convenience, the parties will be referred to as per their ranks in C.O.S.No.40 of 2023.

4. C.O.S.No.40 of 2023 was presented before the learned Principal District Judge at Coimbatore seeking for recovery of certain sums that the plaintiff claims had given to the defendant. It was originally taken on file as O.S.No.871 of 2019.



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5. The defendant had earlier filed O.S.No.1418 of 2018 on the file of the learned II Additional Subordinate Judge at Coimbatore seeking for permanent injunction restraining the plaintiff in the second suit from interfering with his peaceful possession and enjoyment of the property.

6. With the creation of the Commercial Courts in Coimbatore, the suit (O.S.No.871 of 2019) which was presented subsequently stood transferred first to the file of the Commercial Court. It was re-numbered as C.O.S.No.40 of 2023. There is no dispute that the parties have filed their statements of truth and the matter was ready for further proceedings.

7. At that stage, the defendant in C.O.S.No.40 of 2023 changed his counsel and a fresh vakalat was filed on 22.08.2023. An application was filed by the new counsel, to receive additional documents invoking Order XI Rule 10 of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015. The reason that was given in the affidavit for filing of additional documents is that the same were not filed by the original counsel and therefore, they were being presented by the new counsel. This was stiffly opposed by the plaintiff in C.O.S.No.40 of 2023



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by filing a detailed counter.

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8. The learned Judge by an order dated 09.01.2024 dismissed the application. Hence, C.R.P.(PD)No.1740 of 2024 has come before this Court.

9. When C.O.S.No.40 of 2023 was pending before the Commercial Court, the plaintiff in that suit filed a memo on 07.10.2023, pointing to the Court, that O.S.No.1418 of 2018 was pending before the learned IV Additional Subordinate Judge at Coimbatore and that suit may also be transferred to the file of the Commercial Court.

10. On being served with the memo, learned counsel for the plaintiff in O.S.No.1418 of 2018 tendered no objection. I am informed by the learned counsel appeared for both sides that subsequently, a proceeding had been initiated by the learned Principal District Judge at Coimbatore and O.S.No.1418 of 2018 was transferred to the file of the Commercial Court and re-numbered as O.S.No.148 of 2023.

11. A similar application was filed by the plaintiff *albeit* invoking Order XI Rule 1(5) of the C.P.C. as amended by the Commercial Court.



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This application was numbered as I.A.No.2 of 2024. It came to be allowed on 12.02.2024. Hence, the revision is at the instance of the defendant in C.R.P.(PD)No.1090 of 2024.

12. I heard Mr.S.Silambanan, learned Senior Counsel, for the civil revision petitioner in C.R.P.(PD)No.1090 of 2024 and Mr.N.Sridhar representing Mr.R.Bharathkumar in C.R.P.(PD)No.1740 of 2024.

13. Mr.S.Silambanan relying upon the judgments of the Supreme Court in

(i) *Ambalal Sarabhai Enterprises Limited v. K.S.Infraspace LLP and another, (2020) 15 SCC 585;*

(ii) *Sudhir Kumar @ S.Baliyan v. Vinay Kumar G.B., (2021) 7 SCR 731;*

(iii) *TTK Prestige Limited v. Baghla Sanitary ware Private Limited and others, CS (Comm) 281/2021, I.A.Nos.7377 of 2021 & 13421 of 2023, order dated 07.02.2024, and*

(iv) *CEC-CICI JV & others v. Oriental Insurance Co. Ltd., CS(Comm).No.7/2020 & I.A.Nos.11113 & 17718 of 2022, judgment*



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dated 15.05.2023,

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submits that a change of counsel cannot be a ground to invoke the provisions of Order XI Rule 1(5) of the amended C.P.C. He points out that the very same learned Judge, who dismissed I.A.No.3 of 2023 on 09.01.2024, had for the same reason, granted the relief in I.A.No.2 of 2024. Therefore, he states that the order requires to be revised.

14. Per contra, Mr.N.Sridhar pleads that though the statements of truth had been filed on 14.08.2023, certain crucial documents were not filed along with the written statement. On coming to know of the same, after perusal of the pleadings, the new counsel decided to bring forth those documents to the notice of the Court. He points out that C.O.S.No.40 of 2023 had been presented as if it is a simple suit for recovery of money. Whereas between the parties, there had been several transactions including an oral transaction for sale of the land and machineries that belong to the defendant in C.O.S.No.40 of 2023. He states that the plaintiff in C.O.S.No.40 of 2023 had sold machineries of the defendant therein and had also made claims for having installed new machineries in the property belonging to the defendant, when those



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machineries had been installed elsewhere.

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15. Mr.N.Sridhar further points out that though change in counsel was the ground on which I.A.No.3 of 2023 had been filed, the reason for seeking leave of the Court in I.A.No.2 of 2024 was the fact that these documents had been filed before the Court in C.O.S.No.40 of 2023. He vehemently opposes the plea of Mr.S.Silambanan that the document that had been filed in I.A.No.3 of 2023 were only Photostat copies. Mr.N.Sridhar asserts that the documents that had been filed along with I.A.No.3 of 2023 are originals. Pointing out that the Court cannot expect a party to perform an impossible task, he states that since the documents have already been filed before the Court in I.A.No.3 of 2023, they could not be produced at the time when the suit stood transferred from the file of the learned IV Additional Subordinate Judge at Coimbatore to the file of the Commercial Court at Coimbatore.

16. I have carefully considered the submissions of both sides and I have gone through the records.

17. It is not in dispute that the petitioner in C.R.P.(PD)No.1740 of



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2024 had knocked on the doors of the Court first by initiating O.S.No.1418 of 2018 i.e. a suit for bare injunction. It was, nearly a year from the presentation of that plaint, that the defendant in that suit came forward with the suit for recovery of money in O.S.No.871 of 2019 before the learned Principal District Judge at Coimbatore. Being a commercial suit before the learned District Judge that got priority and was transferred first. It was also re-numbered first as C.O.S.No.40 of 2023. The written statement having been filed in March 2021, the parties proceeded further and filed their statements of truth immediately on the suit being transferred to the Commercial Court. Subsequently, the defendant in C.O.S.No.40 of 2023 decided to change his counsel. The new counsel found that certain documents which had been available with the defendant which had not been produced in the Court and hence filed I.A.No.3 of 2023 in the said suit. The only reason that has been given for receipt of the documents is that there is a change in counsel.

18. As rightly pointed out by Mr.S.Silambanan, a change in counsel cannot be the sole reason for grant of leave. Grant of leave must be something which should have happened at the hands of a party seeking the leave of the Court. If a change in counsel as stated by



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Mr.N.Sridhar is to be accepted, then in order to get over the strict time lines under the Commercial Courts Act, a party will change his counsel and on that basis, plead that he has to file fresh documents. If that plea is to be accepted, then the purpose of the Commercial Court itself would be defeated. The learned Commercial Judge has given cogent reasons for rejecting the application in I.A.No.3 of 2023 in C.O.S.No.40 of 2023 dated 09.01.2024. I do not find any reason to interfere with the same.

19. I only have to reiterate that if the party sets forth a good cause for the purpose of the delay in producing the documents, then it will certainly be entertained by a Court. Change in counsel per se is not such a ground. Therefore, I find no reasons to interfere with the order of the learned Judge dated 09.01.2024 in I.A.No.3 of 2023 in C.O.S.No.40 of 2023. Accordingly, C.R.P.(PD)No.1740 of 2024 stands dismissed.

20. Now turning to the other revision in C.R.P.(PD)No.1090 of 2024, the suit continued to be pending on the file of the learned IV Additional Subordinate Judge at Coimbatore from October 2018 to December 2023. It was only when the plaintiff in C.O.S.No.40 of 2023 filed a memo, it came to the notice of the Court that between the very



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same parties, the other suit is pending. Learned counsel for the defendant as pointed out above tendered “no objection” for the transfer. The suits were also transferred and came before the Commercial Court in early December 2023. Immediately thereafter, an application was filed to receive additional documents. Though a reading of paragraph no.2 shows as, if the reason for non production of the documents, being that it was due to the change in counsel, a closer perusal of the affidavit in paragraph no.3 shows that the party pleads, he could not produce the documents on account of the fact that they had been filed along with I.A.No.3 of 2023 in C.O.S.No.40 of 2023.

21. When the originals of the documents are already in Court, one cannot expect that the party to produce the same set of originals in the subsequently transferred suit. Therefore, this reason, that the documents were already been filed in C.O.S.No.40 of 2023 and could not be produced in time in C.O.S.No.148 of 2023, certainly deserves acceptance.

22. By virtue of the fact that the documents have already been filed in Court, they were, obviously, not in possession of the party seeking to let in the documents. I do not find any contradiction in the order as



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urged by Mr.S.Silambanan in the orders dated 09.01.2024 and 12.02.2024. This is because, the reason for the delayed production in both the suits are entirely different. In one case, it was simpliciter change in counsel and in the other, it was because that the documents had been filed in the other suit. Therefore, the reasoning given by the learned Judge to receive the documents in I.A.No.2 of 2024 in C.O.S.No.148 of 2023 dated 12.02.2024 cannot be found fault with. Accordingly, C.R.P.(PD)No.1090 of 2024 also stands dismissed.

23. In the result, both these civil revision petitions stand dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

11.11.2024

Index:Yes/No

Speaking order/Non-speaking order: Yes/No

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN,J.

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To

The Commercial Court (District Judge Cadre), Coimbatore.

C.R.P.(PD)Nos.1090 & 1740 of 2024
and C.M.P.No.5670 of 2024

11.11.2024