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C.R.P.(PD).No.1943 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1943 of 2016 &
C.M.P.Nos.10113 of 2016

A.R.Interiors

Prop. Y.B.Rajkumar

... Petitioner

-Versus-

1.V.Geetha

2.Rajeswari

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to fair and decreetal order of the learned I Additional Subordinate Judge, Salem dated 23.02.2016 in I.A.No.667 of 2015 in O.S.No.88 of 2013.

For Petitioner : *Mr.T.M.Hariharan*

For Respondents : *Ms.Jeevitha for*
Mr.R.Nalliappan

ORDER

This civil revision petition arises against the order passed by the learned I Additional Subordinate Judge, Salem in I.A.No.667 of 2015 in O.S.No.88 of 2013 dated 23.02.2016.



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2. The civil revision petitioner is the plaintiff in the suit. The respondents are the defendants. O.S.No.88 of 2013 is a suit for recovery of money of a sum of Rs.3,48,248/- together with interest from the date of the plaint till the date of realisation.

3. The case of the plaintiff is that he had supplied the materials to one Venkatesan, the husband of the first defendant and the son-in-law of the second defendant. The said Venkatesan had passed away on 28.11.2011. He left behind the respondents/defendants as his legal heirs. The plaintiff made a demand on the defendants to pay up, which Mr.Venkatesan was liable to pay. As the payments remained unsatisfied, he came forth with the suit.

4. A written statement has been filed by the first defendant which was adopted by the second defendant. They pleaded that Mr.Venkatesan did not do the business on his own, but as a partner in G.R.Engineering Contractors. The defendants conceded, they were partners. They added, they were mere name lenders. They pleaded that the claim of the plaintiff against the defendants in their personal capacity is not maintainable and that the partnership firm should be added as a party to the suit.



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5. Pending the litigation, the plaintiff took out an application in I.A.No.667 of 2015. In the said application, he wanted to amend the plaint seeking for correction in the cause title to read as defendants 1 and 2 as partners of G.R.Engineering Contractors and also to implead the firm as the third defendant.

6. This application was opposed by the defendants. They pleaded that the petitioner seeks to fill in a lacuna in the suit and that too, after the dismissal of the ABJ petition.

7. The learned I Additional Subordinate Judge took up the application for disposal and held that the partnership firm is a legal entity and someone has to manage the said entity and the Managing Director appointed by the partners to look after the day to day transaction should have to be impleaded as a party to the suit. Hence, for the aforesaid reasons, though the amendment application was at the pre trial stage, it was rejected. Aggrieved by the same, the present civil revision petition.

8. I heard Mr.T.M.Hariharan for the civil revision petitioner and



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Ms.Jeevitha for Mr.S.Nalliappan for the respondents.

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9. The narration of the facts would show that the suit had been filed for recovery of money on account of the fact that the husband of the first defendant and the son-in-law of the second defendant had received goods from the plaintiff but had not made payments for the same. When the suit summons were served, the defendants took a plea that the goods had been supplied to a partnership firm under the name and style of “G.R. Engineering Contractors” in which they were partners. This constrained the plaintiff to move an application for amendment.

10. The learned Trial Judge was absolutely right in holding that the pre trial amendment required to be considered liberally, but she erred in holding that the Managing Director of a firm, appointed by the partnership firm should be impleaded. I am aware of a partner being designated as a managing partner and non-participating partners called as sleeping partners in colloquial terms. The law does not lay down such a difference. One partner is an agent for another and he acts on behalf of the partnership firm. If not for the defence that had been taken by the defendants, the issue of impleading the partnership firm would not have arisen.



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11. Having taken a defence, it does not lie in the mouth of the defendants that they cannot be sued either in their individual capacities or in the capacity of partners. This seems to be an usual plea of a defendant, who owes money to the plaintiff, to take all kinds of the defences. The law permits the defendants to take such a plea and equally the law permits the plaintiff to amend the cause title in order to avoid any plea of misjoinder, or mis-description of the parties.

12. The plea of Ms.Jeevitha that the suit is barred by time cannot be countenanced as the suit had been presented within a period of three years from the date of supply. Since it is a simple case of misdescription, I am inclined to set aside the order of the I Additional Subordinate Judge, Salem.

13. This civil revision petition is allowed. The plaintiff will be entitled to amend the plaint as sought for. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes / no

Neutral Citation : yes / no



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Speaking / Non Speaking Order

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1.The I Additional Subordinate Judge, Salem.



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V.LAKSHMINARAYANAN, J.

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