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C.R.P.No.2408&2801of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2408 & 2801of 2021and

C.M.P.No.18308 of 2021

Mr.B.Dileep Chakravarti Byra

... Petitioner in both CRP's

Vs.

Mr.M.Mohammed Tarieff

..Respondent in both CRP's

PRAYER in CRP.No. 2408 of 2021 Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the docket order dated 13.09.2021 passed in I.A.No.3 of 2021 in O.S.No.2207 of 2020 on the file of the VI Additional City Civil Court, Chennai.

PRAYER in CRP.No.2801 of 2021 Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 13.09.2021 passed in O.S.No.2207 of 2020 on the file of the VI Additional City Civil Court, Chennai.

In CRP.No. 2408 of 2021

For Petitioner

: Mr.K.Umesh Rao

for M/s.K.Jagannadha Rao

For respondent

: Mr.G.Aarodeia Joseph

for M/s.N.Moorthi



C.R.P.No.2408&2801of 2021

In CRP.No. 2801 of 2021

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For Petitioner	: Mr.K.Umesh Rao for M/s.K.Jagannadha Rao
For respondent	:Not ready in notice

COMMON ORDER

The Civil Revision Petition in CRP.No.2408 of 2021 is filed challenging the order passed by the Trial Court closing the application filed by the petitioner to reject the plaint in I.A.No.3 of 2020

2. The Civil Revision Petition in CRP.No.2801 of 2021 is filed challenging the docket order setting petitioner *exparte* owing his failure to file written statement.

3. The respondent herein filed a suit for recovery of money based on promissory note. He also prayed for injunction restraining the petitioner from interfering or threatening the respondent in his business place.



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4. After receipt of suit summon, the petitioner herein filed an application to reject the plaint under Order VII Rule 11(d) of CPC. The said application was numbered as I.A.No.3 of 2020 and the arguments of the petitioner was heard on 18.02.2021. Thereafter, the respondent's arguments was heard on 11.03.2021. After hearing reply of the petitioner on 23.03.2021, the matter was adjourned to 09.04.2021 for passing orders.

5. It is stated that subsequently there was a change of presiding officer and the matter was posted for fresh hearing on 02.07.2021 and thereafter, it was adjourned to 13.09.2021. On 13.09.2021, when the suit as well as petition for rejection of the plaint was posted together, the Trial Court passed an order setting the petitioner *exparte* in the main suit on the ground that he failed to file written statement.

6. It is seen from the impugned order dated 13.09.2021, the petitioner relying on the judgment in the case of ***Saleem Bhai and Others Vs State of***



Maharashtra and others reported in MANU/SC/1185/2002 submitted that when the petition for rejection of the plaint is filed, the Court shall dispose of the same and proceed further only thereafter. However, the Trial Court relying on the judgment of the Hon'ble Apex Court in **R.K.Roja Vs U.S.Rayadu and Others reported in AIR 2016 SC 3282**, rejected the contention of the petitioner and set him *exparte*. Consequently, the petition for rejection of the plaint filed by the petitioner in I.A.No.3 of 2020 was also closed. Aggrieved by the same, the petitioner is before this Court.

7. The learned counsel for the petitioner by relying on the judgment of the Hon'ble Apex Court in **R.K.Roja Vs U.S.Rayadu and Others reported in AIR 2016 SC 3282** submitted that when petition for rejection of the plaint is filed by the defendant, the Trial Court shall not proceed with the trial of the matter without deciding the application for rejection of the plaint.

8. In **R.K.Roja Vs U.S.Rayadu and Others reported in AIR 2016 SC 3282** cited supra, the Hon'ble Apex Court observed as follows:-



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C.R.P.No.2408&2801 of 2021

*“6. Once an application is filed under Order VII Rule 11 of the Code of Civil Procedure, the Court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter(see **Saleem Bhai and Others Vs State of Maharastra and others reported in MANU/SC/1185/2002** :(2003) 1SCC 557. But once an application for rejection is filed, the Court has to dispose of the same before proceeding with the trial Court.*

9. A reading of the above judgment would indicate that when application is filed by the defendant for rejection of the plaint, the Court shall proceed to dispose of the application and then, proceed with the trial of the matter. In the above mentioned case law, it is clearly mentioned that the



defendant is entitled to file his written statement after dismissal of the petition for rejection of the plaint. In such circumstances, the impugned order passed by the Court below is unsustainable. Hence, both the Civil Revision Petitions are liable to be allowed.

10. In the case on hand, without deciding the petition for rejection of the plaint, the Trial Court set the petitioner *ex parte* for his failure to file written statement and consequently, closed the application for rejection of the plaint. The said procedure adopted by the Trial Court is clearly against the law laid down in ***R.K.Roja*** case cited supra. Therefore, both the civil revision petitions are allowed by setting aside the order impugned in this revision.

11. The Trial Court is directed to dispose of the I.A.No.3 of 2020 filed to reject the plaint as expeditiously as possible. It is also made clear that in case, the petition for rejection of the plaint is dismissed by the Trial Court, the petitioner shall file his written statement within a period of 30 days from the date of dismissal of the petition.



WEB COPY



C.R.P.No.2408&2801of 2024

12. With these clarifications, both the Civil Revision Petitions are allowed. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2024

Index : Yes / No
Internet : Yes / No
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To

The learned VI Additional City Civil Judge, Chennai.



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S.SOUNTHAR, J.

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