



C.R.P.(NPD).No.4327 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.4327 of 2023

K.Murugan

... Petitioner

VS

R.Mohanasundaram

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.12.2022 in O.S.S.R.No.15716 of 2022 on the file of learned Principal District Judge at Erode and learned Principal District Judge at Erode to number the suit.

For Petitioner : Mr.J.Franklin

ORDER

This Civil Revision Petition arises against the order of the learned Principal District Judge, Erode in O.S.SR.No.15716 of 2022 dated 21.12.2022.

2. O.S.SR.No.15716 of 2022 was presented by the civil revision petitioner seeking for return of the advance amount of Rs.20,00,000/-



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together with interest at the rate of 12% per annum, crystallizing it at Rs.30,14,500/- and also to create a charge over the property.

3. The cause of action for the suit is that the plaintiff entered into a Lease Agreement with the defendant on 09.09.2018 to run a dyeing unit in the property belonging to the defendant. The plaintiff had given an advance of Rs.20,00,000/- at the time of agreement. Within a month of taking possession of the property, the plaintiff alleges that the defendant prevented him from running the unit. Therefore, the plaintiff filed O.S.No.368 of 2019 on the file of the Sub Court, Thiruchengode, seeking for the relief of permanent injunction. Thereafter, he found that the defendant was instigating local persons to prevent the plaintiff from running the dyeing unit. Therefore, in order to put an end to his agony, the plaintiff decided to discontinue his business with the defendant and wanted a refund of the advance amount. Hence, the suit for recovery of money.

4. On the plaint being presented, the learned Judge returned the plaint primarily stating that the suit on the face of it is barred by time. This is



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because, the advance was given on 09.09.2018 and the suit came to be filed on 19.12.2022. The plaintiff pleaded that between 22.03.2020 to 28.02.2022 the Limitation Act was kept in abeyance by the order of the Supreme Court and hence, pleaded that the suit was on time. Yet again, the learned Judge returned the plaint stating 'Previous return dated 21.12.2022 Sl.No.2 not complied with (O.S.368/2019 was a separate case and this suit is filed based on the lease agreement dated 09.09.2018). Hence, the present revision.

5. Mr.J.Franklin would submit that for the period from 22.03.2020 to 28.02.2022 by virtue of the orders of the Supreme Court, the Limitation Act stood suspended. He would state that, without taking note of the said fact, the Court was repeatedly returning the plaint without numbering the same. Hence, being left with no other option, he has presented the present suit.

6. I have carefully considered the arguments on the side of the petitioner and perused the records.



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7. The Hon'ble Mr.Justice N.SESHASAYEE in ***Selvaraj vs***

Koodankulam Nuclear Power Plant India Limited, (2021) 5 MLJ 467, had

held that it is not the duty of the Court to act as the defendant. He would point out that the return of the plaint is a ministerial act and the Court at the time of return should not pass any judicial order. Under the Code of Civil Procedure, the plaintiff has to plead how the suit is in time. A specific paragraph is found in the plaint at IX, stating that the period of limitation was exempted due to pandemic caused by Corona virus from 22.03.2020 to 28.02.2022. Taking cognizance of that, the learned Judge should have numbered the plaint. No doubt, it is the duty of the Court in terms of Section 3 of the Limitation Act, to consider the plea of limitation. However, it need not drawn on itself the role of the defendant at the time of numbering.

8. The Supreme Court held *in re* Article 142 Suo Motu W.P.No.3 of 2020 that the period of limitation shall stand excluded from 15.03.2020 to 30.04.2022. Series of orders were passed by the Supreme Court taking into consideration the pandemic caused due to the Corona virus. The said verdict is binding on all Courts, including the Courts in Erode. The learned Judge



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ought not to have return the plaint on the ground of limitation when the Supreme Court itself has excluded the time.

9. Therefore, this Civil Revision Petition is allowed. The learned Principal District Judge at Erode shall number the suit in O.S.SR.No.15716 of 2022, if the plaint is otherwise in order, and issue summons to the defendant. There shall be no order as to costs.

02.08.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

Note to Registry: The original plaint that has been filed along with the revision shall be returned to the learned counsel for the petitioner, after obtaining usual endorsement.

To

The Principal District Judge,
Erode.



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V.LAKSHMINARAYANAN, J.

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