



C.R.P.No.3742 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3742 of 2024

R.Sahaya Beulah

... Petitioner

-Vs-

Natarajan

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the impugned order dated 14.07.2023 passed in I.A.No.1 of 2022 in O.S.No.697 of 2021 on the file of the Subordinate Judge, Poonamallee and dismiss the said I.A.,

For Petitioner : Mr.R.Krishnan

ORDER

This Civil Revision Petition arises against the order dated 14.07.2023 passed by the learned Subordinate Judge at Poonamallee in I.A.No.1 of 2022 in O.S.No.697 of 2021.

2. O.S.No.697 of 2021 is a suit for recovery of a sum of Rs.3,50,960/- with interest at the rate of 1% on the principal amount of Rs.3,28,000/- from the date of the plaint till the date of realization. There is no dispute on the relationship



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between the parties. The plaintiff was the landlord and the defendant was the tenant. Alleging that during the period of tenancy, the defendant did not pay the rents, the present suit has been filed.

3. On service of summons, the defendant took out an application under Order VII Rule 11 seeking to reject the plaint. The claim of the defendant is that the plaintiff claims arrears from June 2018 till December 2021 and by virtue of Article 52 of the Limitation Act, three year period having gone by, the suit is barred by time.

4. Notice was issued in the said application and the respondent / plaintiff filed a counter affidavit stating that limitation is a mixed question of law and fact and cannot be gone into at the time of rejection of plaint. This submission found acceptance with the trial Judge, who dismissed the application and hence this revision.

5. I heard Mr.R.Krishnan for the civil revision petitioner. Mr.R.Krishnan would invite my attention to the plaint and point out that the suit had been presented for recovery of arrears from June 2018 to September 2021. The suit had been filed only on 17.12.2021. He would state that under Article 52 of the Limitation Act, the suit has to be filed within three years from the date the arrears commences and therefore the reasoning of the learned trial Judge is erroneous.



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6. It is not in dispute that there had been arrears from June 2018. It cannot be disputed also on account of the fact that the Rent Controller had returned such finding in RCOP No.64 of 2018 on 27.01.2021. A finding given by the Court with limited jurisdiction would operate as *res judicata* in terms of explanation (viii) to Section 11 of CPC. Even if I were to agree with Mr.Krishnan that part of the agreement is barred, still the plaint cannot be rejected, for a plaint cannot be rejected in part. In terms of Order VII Rule 11 of CPC, the entire plaint is rejected or the entire plaint stays on the file of the Court. That being the situation, if a part of the claim is barred by limitation, the remedy for the defendant is only to contest the suit by filing a written statement, and get the suit dismissed insofar as the portion which is barred by time. That does not mean the entire plaint should be rejected. In any event, the learned trial Judge has left open the issue of limitation as is seen from Para 6 of the impugned order. Leaving it open to the petitioner / defendant in the suit to raise the plea of limitation at the time of trial, this civil revision petition stands dismissed. No costs.

13.09.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Subordinate Judge, Poonamallee.



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V. LAKSHMINARAYANAN, J.

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