



C.R.P.No.4538 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4538 of 2024
and C.M.P.No.25271of 2024

1.S.Kistan
2.S.Baskar

... Petitioners

-Vs-

1.C.Jayakumar
2.A.Ruthra Thandeeswaran

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 04.10.2024 passed on the petitioners / defendants Memo G.No.519/2024 in O.S.No.16/2012 and strike down the amendment carried out to the plaint and direct the trial Court to proceed with the trial of the suit on the plaint originally filed in O.S.No.16 of 2012.

For Petitioner : Mr.R.Devasenar

ORDER

This Civil Revision Petition arises against the order passed by the learned District Munsif-cum-Judicial Magistrate at Sriperumbudur in a memo that was filed by the Civil Revision Petitioner in Memo G.No.519 of 2024 dated 12.09.2024.

2. This is the second round of litigation which has arisen before this Court. The plaintiff took out an application in I.A.No.1 of 2023 seeking for a declaration that the suit 'C' schedule mentioned property is a common passage to reach 'A' and



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'B' schedule mentioned properties and also for mandatory injunction directing the defendants to demolish the compound wall constructed over the common passage described in 'D' and 'E' schedules.

3. Pending the suit, pleading that the defendants had put up construction over the 'C' Schedule mentioned property, an application for amendment was taken out. This application was numbered as I.A.No.1 of 2023. Notice was ordered to the respondents / defendants. After hearing both sides, the learned District Munsif, Sriperumbudur allowed the application on 09.02.2024.

4. Aggrieved by the same, the defendants preferred a revision before this Court in C.R.P.(PD) No.1862 of 2024. After hearing both sides, the revision came to be dismissed on 19.08.2024. Thereafter, the defendants filed a memo on 12.09.2024 stating that, as the period of 14 days as required under Order VI Rule 18 had expired, the plaintiff is not entitled for to amend the plaint. The learned District Munsif did not agree with the said plea and accepted the amended plaint copy. Hence, this revision.

5. I heard Mr.R.Devasenar for the civil revision petitioner.

6. Mr.Devasenar argues that on account of the failure of the plaintiff to amend the plaint within the 14 days from the date of amendment, he forfeits the



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right to amend the plaint and therefore the suit has to proceed on the basis of the unamended plaint. He argues that the view taken by this Court in **Southern Ancillaries Private Limited rep.by its Managing Director S.Sadasivam -vs- Southern Alloy Foundaries Private Limited [2003 (2) Law Weekly 295]** and that of the Supreme Court in **Union of India -vs- Pramod Gupta and Others [2005(12) SCC 1]** supports his plea and he seeks that the order has to be revised.

7. I have considered the submissions of Mr.Devasenar.

8. It is not in dispute that the amendment application was allowed on 09.02.2024. It was the defendants who had preferred a revision before this Court in CRP (PD) No.1862 of 2024. By virtue of the fact that a revision was preferred to this Court and it was disposed off on 19.08.2024, the plaintiffs could not have amended the plaint. In any event, by virtue of the fact that the CRP came to be dismissed on 19.08.2024, the order of the learned District Munsif in I.A.No.1 of 2023 merged with the order of this Court on 19.08.2024. Therefore, the starting point would not be the date of the original order that has been passed by the learned District Munsif, but the date on which the CRP came to be dismissed. This still leaves a gap of about 15 days from 19.08.2024 to 12.09.2024.

9. In terms of Order VI Rule 18 of CPC, the time period of 14 days is subject to extension that may be granted by the Court. Mr.Devasenar argues that no



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application had been filed by the plaintiff seeking for extension of time. In terms of Section 3(2) of the Civil Rules of Practice and Circular Standing Orders framed by this Court, an application also includes an "oral application". Obviously, the plaintiff need not always file a petition in writing and get it numbered and only thereafter seek for extension.

10. The two judgments that Mr.Devasenan relies upon merely set out the provisions under Order VI Rule 18 of CPC and held that if the time is not extended by the Court, it is not open to the Court to refer to the amended plaint. In this case, the learned District Munsif had exercised her discretion and has permitted the plaintiff to file the amended plaint copy on 12.09.2024. This implies that the District Munsif was satisfied that the time to amend the plaint deserved to be extended. If time is extended at the discretion of the learned Judge, unless and until the same is excessive or capricious, it is seldom interfered with by this Court in exercise of the revisional powers under Article 227 of the Constitution. That being the position of law, I do not find any reason to interfere with the order impugned. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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To

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The District Munsif-cum-Judicial Magistrate

Sriperumbudur



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V. LAKSHMINARAYANAN, J.

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