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C.R.P.No.4117 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4117 of 2019
and
C.M.P.No.26847 of 2019

1.Velusamy
2.Mrs.Lakshmi

... Petitioners

Vs.

1.M/s.Corporation Bank,
A body corporate constituted under the Banking Companies
(Acquisition and Transfer of Undertakings) Act, 1980,
Having its Head Office at Mangalore and Branches
inter alia one at Sulur, Coimbatore-641 402
Represented by its Branch Manager Mr.N.Nagaraju
S/o.Mr.Muthu Pillai

2.M/s.Guru Textiles
Represented by its Proprietor Mr.V.Jayakumar (died)

3.Mrs.Shanthi
4.Minor Pradheeksha
5.Minor Gurubaran

...Respondents



C.R.P.No.4117 of 2019

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 17.10.2019 in I.A.No.1 of 2019 in O.S.No.533 of 2018 before the Principal District Judge's Court, Coimbatore.

For Petitioner	: Mr.P.Sathish Kumar for Mr.P.Dinesh Kumar
For Respondent 1	: No appearance
For respondent 2	: Died
For respondent 2 to 5	: Served- No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the 1st respondent to bring on record the petitioners and the respondents 3 to 5 as legal representatives of deceased proprietor of Guru Textiles namely V.Jayakumar.

2. The 1st respondent herein filed a suit for recovery of money against 2nd respondent, a proprietary concern represented by deceased V.JayaKumar. It is seen from the affidavit filed in support of the application filed by the 1st respondent that suit was presented against dead person. Even on the date of filing of the suit, the said V.JayaKumar was no more. Therefore, the present application has been filed by the 1st respondent to bring on record the legal



representatives of the deceased V.JayaKumar and the same was allowed by impleading the petitioners and respondents 3 to 5. Aggrieved by the same, the petitioners are before this Court.

3. The learned counsel for the petitioners raised following points:-

i) the suit filed against dead person shall be treated as a nullity.

Therefore, the legal representatives cannot be brought on record.

ii) the petition filed by the 1st respondent to bring on record the legal representatives of deceased V.JayaKumar was not at all maintainable when at the time of presentation of the plaint itself, it was a nullity.

4. A reading of plaint averment would suggest that the suit was filed for recovery of money. According to the 1st respondent, there was acknowledgment of debt on 27.03.2017. Therefore, the limitation for filing a suit ends only on 26.03.2020. The present application, for bringing the legal representatives on record filed by 1st respondent on 22.03.2019 was well within the time for filing the suit. Technically, the 1st respondent is not entitled to file a petition to bring on record the legal representatives of the deceased V.JayaKumar, who was no



more even on the date of filing of the plaint. It is open to the plaintiff to file an application to implead the legal representatives provided limitation for filing a fresh suit is not over. In the case on hand, as pointed out earlier, the limitation for filing of the fresh suit expires only on 26.03.2020 as per the averment found in the plaint. Therefore, the application filed by the 1st respondent shall be treated as one filed to implead the legal representatives of deceased V.JayaKumar by amending the cause title.

5. The learned counsel for the petitioners further submitted that 1st petitioner herein, who is father of the deceased V.JayaKumar cannot be treated as his legal representative in the presence of Class I heirs namely 2nd petitioner and respondents 3 to 5.

6. The said submission made by the learned counsel for the petitioner is well founded and the Trial Court ought not to have impleaded the 1st petitioner herein as legal representative of deceased V.Jayakumar. Hence, the impugned order is liable to be set aside to that extent. Accordingly, the Civil Revision Petition stands partly allowed by setting aside the order impugned in this



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revision in so far as 1st petitioner is concerned. The impugned order is confirmed in respect of other petitioner and respondents 3 to 5 and hence, the Civil Revision Petition stands dismissed in other respects.

7. At this juncture, the learned counsel for the petitioner submits that subsequent to the filing of revision petition, the case has been transferred to the learned Senior Civil Judge, Commercial Court, Coimbatore and numbered as C.O.S.No.123/2023. Therefore, registry is directed to mark the copy of this order to learned Senior Civil Judge, Commercial Court, Coimbatore. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Principal District Judge, Coimbatore.
- 2.The learned Senior Civil Judge, Commercial Court, Coimbatore.

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S.SOUNTHAR , J.

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