



CRP.No.277 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2024

PRONOUNCED ON : 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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and

CMP.Nos.1291 & 4062 of 2024

Daejung Moparts Private Limited

No.6, Sengundram Indl. Estate,

Melrosapuram, Singaperumal Koil,

Chengalpattu District – 603 204.

Represented by its authorized signatory

Mr.Ganesh

...

Petitioner

VS.

1.Premalatha Jagdish Bansal

2.Pooja Goel

...

Respondents

(Both represented by their power agent

Mr.Manu Goel)

PRAYER : This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the order dated 13.12.2023 passed in O.S.No.463 of 2022 on the file of the Principal District Court, Chengalpattu.

For Petitioner

...

Mr.M.G.Pranava Charan

For Respondents

...

Mr.V.Raghavachari,
Senior counsel for Mr.T.Balaji



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ORDER

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This civil revision petition has been filed to set aside the order dated 13.12.2023 passed in O.S.No.463 of 2022 on the file of the Principal District Court, Chengalpattu.

2.The petitioner is the defendant and the respondents are the plaintiffs. The plaintiffs have filed the suit in O.S.No.463 of 2022 on the file of the District Court, Chengalpattu with the following prayers:

(a). To quit, vacate and deliver vacant possession (recovery of possession) of the property for an extent of 1.77 Acres out of 3 Acres in S.F.Nos.232 and 66 part (as per S.F.Nos. As reflected in FMB Sketch 232/1B Part, 2D Part, 2E Part, 66/2E Part, 66/2F Part) situated at Sengundram Village, Chengalpattu Taluk, Kancheepuram District along with the building covering an plinth area of 41135 sq.ft which is more fully described as schedule property hereunder;



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(b).Direct the defendant to pay the sum of Rs.44,27,920/- towards arrears of rent from January 2022 to May 2022;

(c).Direct the defendant to pay the sum of Rs.8,85,580/- towards GST payment from January 2022 to May 2022;

(d).Direct the defendant to pay the sum of Rs.9,83,980/- towards arrears of rent from June 2022 to July 2022, totaling to a sum of Rs.19,67,960/-;

(e).Direct the defendant to pay the statutory payment of Rs.90,329/- towards the GST arrear for the month of December 2021;

(f).Mandatory Injunction to direct the defendant to make the statutory payment of Rs.7,87,184/0 towards the TDS arrears from October 2021 to May 2022;



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(g). Direct the defendant to pay the liquidated damages of Rs.90,000/-per day from 05.07.2022 till 16.08.2022 towards use and occupation of the schedule property totaling to Rs.38,70,000/-

(h).To direct the defendant to pay the liquidated damages of Rs.90,000/- per day towards future use and occupation of the schedule property from the date of plaint till the date of delivery of possession of the suit schedule property by the defendants to the plaintiffs;

(i).For a permanent injunction and other reliefs.

The trial Court, on 13.12.2023 for non filing of the written statement by the defendant, set exparte and posted for exparte evidence on 20.12.2023, which is under challenge.

3.The learned counsel appearing for the petitioner submitted that the petitioner filed an application in I.A.No.6 of 2023 on 22.11.2022 for return of the plaint under Order VII Rule 10 CPC on the ground that the Court



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has no jurisdiction. Further submitted that the learned Judge, without considering the application seeking for return of plaint filed by the petitioner in I.A.No.6 of 2023, has erred in setting exparte for non filing of the written statement. The petitioner has clearly pointed out the lack of jurisdiction on the part of the Court to entertain the suit and the Court has to adjudicate upon the jurisdiction before forcing the petitioner for filing the written statement and thus, pleaded to allow the civil revision petition.

4.To support his argument, the learned counsel appearing for the petitioner relied upon the decisions of the Hon'ble Supreme Court in (i). ***Saleem Bhai and Ors. Vs. State of Maharashtra and Ors*** reported in ***MANU/SC/1185/2002***, (ii). ***R.K.Roja Vs. U.S.Rayudu and Ors*** reported in ***MANU/SC/0751/2016*** (iii).the decision of the Rajasthan (JaiPur Bench) High Court in ***Laxmi Narayan Sharma Vs. Rajeshree Khandewal and Ors*** reported in ***MANU/RH/1368/2016*** (iv).the decision of the Delhi High court in ***Jagmohan Behl Vs. State Bank of Indore*** reported in ***MANU/DE/2930/2017*** (v).the decision of this Court in ***S.Murugan Vs. J.Joseph in CRP.(NPD).Nos.3056 of 2021 batch cases***.



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5. The learned counsel appearing for the respondents supported the impugned order and contended that an application filed under Order VII Rule 10 CPC can be maintained only by the plaintiffs and not by the defendant. After the amendment to the Code of Civil Procedure in 2002, it prescribed 30 days as the period for filing the written statement from the date of service of summons. In this case, the petitioner/defendant received summon and appeared from 12.10.2022 to 13.12.2023, but had not filed a written statement. Therefore, the trial Court for non filing of written statement set exparte. He can very well raise an objection regarding jurisdiction in the written statement, if the defendant were to file an application, he would be doing so at his peril. Because it would take considerable time to dispose of such an application filed by the defendant. However, the delay in disposal would not extend the period prescribed for filing the written statement. Therefore, there is no illegality in the impugned order and seeking to dismiss the civil revision petition.



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6.To support his argument, the learned counsel appearing for the respondent relied upon the judgment of the Karnataka High Court in ***M/s.Vasudeva Rao & Sons and Another Vs. Smt. Prathiba Devi*** reported in ***ILR 2015 KAR 415*** and another judgment of Karnataka High Court in ***W.P.No.100173 of 2024***.

7.I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on record.

8.On perusal of the materials and records, the fact reveals that the revision petitioner is the defendant and the respondents are the plaintiffs in O.S.No.463 of 2022 on the file of the District Court, Chengalpattu. The petitioner, after appearance, filed I.A.No.6 of 2023 for return of plaint under Order VII Rule 10 CPC for want of jurisdiction on 22.11.2022. It is noticed that the diary extract of the daily status of the Court reveals that I.A.No.6 of 2023 is not decided by the Court as on date. The trial Court on



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13.12.2023, non filing of the written statement, the defendant called absent set exparte. For better appreciation, the diary extracts runs as follows:

“Written statement not filed, defendant called absent. For exparte evidence by 20.12.2023. IA.3/2022 C/w. Suit (IOE) IA.4,5,6/2022 C/W.suit by 20.12.2024. Next purpose - Ex-Parte Evidence Next hearing date – 20.12.2023”

It is now under challenge.

9. According to the petitioner, the trial Court, without deciding the jurisdiction of the Court to entertain the suit, set exparte the defendant for non filing of the written statement is unsustainable. The Court erred in not considering the application seeking for return of plaint filed by the petitioner in I.A.No.6 of 2023. The argument of the learned counsel for the respondents is that the time limit for filing the written statement is 30 days from the date of service of summons, instead of filing written statement, the defendant raised an objection regarding jurisdiction and he filed an application to that effect. Since the application is not disposed of, the delay in disposal would not extend the period prescribed for filing the written statement.



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10. The settled principle of law is that, if a question as to jurisdiction, territorial or pecuniary, is raised at any stage of the suit, then it is the bounden duty of the Court to decide the matter to short circuit litigation and protect the parties from undue harassment of protracted and expensive litigation where a question of lack of jurisdiction has been raised the Court can decide the issue. It need not wait for filing of written statement. The words 'at any stage of the suit' would include the stage prior to filing of written statement. Therefore, without deciding the matter of jurisdiction set exparte the defendant is unsustainable, therefore, it is liable to be set aside. Accordingly, the impugned order is hereby set aside and the civil revision petition is allowed. The trial Court is directed to dispose of the application filed by the petitioner with regard to the jurisdiction in I.A.No.6 of 2023 within one month. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No

15.03.2024

Internet : Yes/No

sms

To

The Principal District Court, Chengalpattu.

V.SIVAGNANAM ,J.



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Pre-delivery Order made in
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