



C.R.P.(MD)No.1434 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1434 of 2022

and

C.M.P.(MD)No.5969 of 2022

K.Venkatesan

... Respondent/Defendant/
Revision Petitioner

Vs.

V.R.C.Suresh Kumar

... Petitioner/Plaintiff/Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 10.03.2022 in E.P.No.105 of 2018 in O.S.No.382 of 2006 on the file of the I Additional District Munsif, Tiruchirapalli and allow the Civil Revision Petition as prayed for.

For Petitioner : Mrs.A.L.Gandhimathi, Senior Counsel,
For Mr.C.Mahadevan.

For Respondent : Mr.R.Baskaran, Senior Counsel,
For Mr.K.R.Kishore Ram.

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ORDER

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Heard the learned senior counsel for the revision petitioner and the learned senior counsel for the respondent.

2.The respondent herein filed O.S.No.382 of 2006 on the file of the District Munsif Court, Karur seeking permanent injunction restraining the revision petitioner herein from interfering with his running of the suit petrol bunk. The suit was compromised. I.A.No.26 of 2006 was filed under Order XXIII Rule 3 of Civil Procedure Code. A compromise decree was passed on 09.06.2006. It was decreed that the memo of compromise shall form part of the decree. To enforce the same, the respondent herein filed E.P.No.105 of 2018 on 01.03.2018. The E.P. was partly allowed on 10.03.2022. Questioning the same, this civil revision petition has been filed.

3.The learned senior counsel for the revision petitioner submitted that what has been enforced is the decree for mandatory injunction. It is pointed out that as per Article 135 of the Limitation Act, 1963 a decree granting mandatory injunction has to be enforced within three years. In this case, the decree was passed on 09.06.2006 and E.P. was filed only on 01.03.2018. By the impugned



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order, the revision petitioner has been directed to go before the officials of BPCL to sign certain papers. According to the learned senior counsel for the revision petitioner, the executing Court failed to consider the plea of limitation specifically raised in the counter. It is also pointed out that the revision petitioner has also filed an independent suit in O.S.No.150 of 2019 on the file of the Sub Court, Karur for declaring that the compromise decree is vitiated by fraud. She called upon this Court to set aside the impugned order and allow the civil revision petition as prayed for.

4.Per contra, the learned senior counsel for the respondent submitted that the execution petition cannot be said to be barred by limitation. It is further pointed out that the executing Court rightly ignored the institution of O.S.No.150 of 2019. He called upon this Court to dismiss the civil revision petition.

5.I carefully considered the rival contentions and went through the materials on record. Article 135 of the Limitation Act, 1963 is as follows:-

For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
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6.The respondent herein had filed O.S.No.382 of 2006 for the relief of permanent injunction. The suit was disposed of 09.06.2006 in terms of the compromise decree said to have been executed between the parties. So long as this decree has not been stayed or nullified, one has to proceed on the premise that it is holding good. The learned senior counsel for the revision petitioner commented that even though the suit is only for permanent injunction, the compromise decree reads more like a declaratory decree.

7.This submission in my view may not have much of force. As per Order XXIII Rule 3 of Civil Procedure Code, it is not necessary that the subject matter of compromise should be confined to the scope of the suit. It can very well go beyond the suit prayer.

8.Clause 5 in the compromise decree that has now been enforced by the Court below reads as follows:-

“5. தேவைப்படும் சமயத்தில் மெஸர்ஸ் BPC அதிகாரிகள் முன்னிலையில் தேவையான உடன்படிக்கை மனுக்களில் கையெழுத்து செய்ய பிரதிவாதிக்கு உத்திரவிடப்படுகிறது.



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9.The aforesaid clause is to the effect that as and when required, the defendant (revision petitioner herein) must put his signature in the relevant papers before the officials of BPCL. Article 135 states that if a date is fixed for performance, the limitation of three years will start running from the said date. Since the decretal clause is to the effect that the defendant must sign the relevant papers as and when required, the period of limitation would start running only from the date when such requirement arises. The learned senior counsel for the respondent points out that on 18.02.2018, the BPCL committee gave its final conclusion report. In fact, Exs.B1 to B3 marked in the execution petition indicate that notices were issued by BPCL both to the plaintiff as well as defendant calling upon them to appear before them and sign the relevant papers. I, therefore, hold that limitation will not start running from the date of decree.

10.It is also pointed out by the learned senior counsel for the respondent that the defendant had agreed to take Rs.15,00,000/- in lieu of relinquishing all his interest in the firm. It has been convincingly demonstrated before me that a sum of Rs.15,00,000/- was paid through cheques and the defendant has also encashed the same. So long as this compromise decree has not been stayed or



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set aside in the manner known to law, it may not be open to the revision petitioner herein to question the impugned order on the ground of limitation. I do not find any merit in the civil revision petition and it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The I Additional District Munsif Court,
Tiruchirappalli.



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G.R.SWAMINATHAN, J.

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