



CRP(PD)(MD).No.1811 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1811 of 2022 and
CMP(MD).No.8113 of 2022

Arockiamsamy Sundaram : Revision Petitioner / 1st defendant

Vs.

1.Fr.John Kennedy : 1st respondent / plaintiff
2.Andrew Vasanth
3.Annie Steffi : respondents 2 and 3 / defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order passed in I.A.No.63 of 2019 in O.S.No.54 of 2018, dated 02.06.2022 on the file of Principal District Judge, Thanjavur.

For Petitioner : Mr.R. Ravindran

For respondents : Mr.K.K.Senthil

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.63 of 2019 in O.S.No.54 of 2018, dated



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02.06.2022 on the file of Principal District Judge, Thanjavur.

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2. The factual matrix of the case is that the 1st respondent as plaintiff filed the above suit in O.S.No.54 of 2018 for recovery of money. Pending suit, the revision petitioner / 1st defendant has filed an application in I.A.No.63 of 2019 under Order 7 Rule 11(d) and Section 151 CPC for rejection of the plaint stating that the suit is barred by limitation. The trial Court dismissed the said application stating that the limitation aspect can be ascertained only at the time of trial. Aggrieved by the same, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner / 1st defendant would submit that the suit is for recovery of money and the same ought to have been filed within a period of three years as per Section 18 of the Limitation Act. As the money transaction was of the year 2004, it is a time bound transaction and there is no evidence to establish for renewal of the enforceable document. The trial Court has erroneously dismissed the application and therefore, prays for allowing this Civil Revision Petition.



4. Per contra, the learned counsel appearing for the 1st respondent / plaintiff would submit that it is not a case of borrowal of money and it is only entrustment of money to the first respondent. Therefore, the question of limitation does not arise in this case. His further contention is that the question of limitation is mixed question of law and fact which can be ascertained only at the time of trial. In support of his contention he has relied upon the Judgment of this Court reported in **2021 SCC online SC 735** in the case of **Salim D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others**.

5. Heard the learned counsel appearing on either side and perused the perused the materials available on record.

6. The question of limitation was rightly pointed by the learned counsel for the first respondent / plaintiff as mixed question of fact and law. Further the said transaction according to the plaintiff is not in connection with borrowal of money, it is only entrustment of money by the plaintiff to the defendant and the above said fact can be considered only based on evidence and hence, the suit requires complete adjudication. Hence, the order passed by the trial Court requires no interference by this



CRP(PD)(MD).No.1811 of 2022

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7. Accordingly, this Civil Revision petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

13.11.2024

Index : Yes / No

Internet : Yes/ No

trp

To

The Principal District Judge,

Thanjavur.



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K. GOVINDARAJAN THILAKAVADI, J.,

trp

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