



C.R.P(MD)No.1878 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1878 of 2024
and
C.M.P(MD)No.10626 of 2024

T.M.International duly represented by its
Proprietor M.Thenmozhi,
W/o.Meenakshisundaram,
No.11, Mahan Gandhi Road,
Sellur,
Madurai Town,
Madurai District.

... Petitioner /
Respondent /
Defendant

Vs.

M/s.Meena Garments duly represented by its
Proprietor K.Sivanandapathy,
S/o.Kanagasabapathi,
No.31/6, Vaiyapuri Nagar 1st Cross,
Karur,
Karur District.

... Respondent /
Petitioner /
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the
Constitution of India, to allow this civil revision petition thereby setting



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aside the order passed by learned Principal District Judge, Karur dated 11.07.2024 passed in I.A.No.6 of 2024 in O.S.No.119 of 2018 and dismiss the petition in I.A.No.6 of 2024 in O.S.No.119 of 2018.

For Petitioner : Mr.S.Parthasarathy

For Respondent : Mr.R.Ramaguru
for Mr.L.Prabakaran

ORDER

Heard both sides.

2.The revision petitioner is the defendant in O.S.No.119 of 2018 on the file of Principal District Judge, Karur. The suit was instituted in the name of Meena Garments duly represented by its Proprietor K.Sivanandapathi. I.A.No.06 of 2024 was filed for amending the plaint as follows:

“1) In the Short Cause Title & in the Docket, modify the plaintiff's description of Meena Garments duly represented by its Proprietor K.Sivanandapathi S/o.Kanagasabapathi as K.Sivanandapathi S/o.Kanagasabapathi, Proprietor M/s.Meena Garments.



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2) *In the Long Cause Title, modify the plaintiff's description Meena Garments duly represented by its Proprietor K.Sivanandapathi S/o.Kanagasabapathi as K.Sivanandapathi S/o.Kanagasabapathi, Proprietor M/s.Meena Garments, Hindu, aged about 46 years, having office at 31/6, Vaiyapuri Nagar 1st Cross, Karur – 639 002.*

3) *In the Short Cause Title & in the Docket, modify the defendant's description of M/s.T.M.International duly represented by its Proprietrix M.Thenmozhi as M.Thenmozhi W/o.MeenakshiSundaram Proprietor M/s.T.M.International*

4) *In the Long Cause Title, modify the defendant's description of M/s.T.M.International duly represented by its Proprietrix M.Thenmozhi W/o.Meenakshi Sundaram as M.Thenmozhi W/o.Meenakschi Sundaram Proprietor M/s.T.M.International, Hindu, aged about 48 years, and having office at No.11, Mahan Gandhi Road, Sellur, Madurai – 625 002.”*

The Court below vide order dated 04.07.2024 allowed the IA. Questioning the same, this Civil Revision Petition came to be filed.

3.The learned counsel appearing for the revision petitioner raised two contentions. He pointed out that a proprietary concern is not a legal



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entity and that the suit filed in its name is not maintainable. He also pointed that even if the amendment order is sustained, the amendment should come into effect from the date when the amendment was ordered. He drew my attention to Section 21 of the Limitation Act, 1963 and the judgments reported in **2001 SAR (Civil) 327 (Ramalingam Chettiar Vs P.K.Pattabiraman & Another)** and **(2005) 4 M.L.J 4 (Manonmaniammal & Others Vs Dr.Duraikannu & Others)**. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned counsel for the respondent submitted that the impugned order is well reasoned and that it does not warrant interference.

5.I carefully considered the rival contentions and went through the materials on record.

6.It is true that a proprietary concern is not a legal entity which can sue in its own name and thus a suit instituted in its name is not maintainable. Order 30 Rule 10 of CPC provides that any person



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carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. In other words, a proprietary concern can be a defendant by itself. But Order 30 Rule 10 CPC does not enable a person carrying on business in a name or style other than in his own name to sue in such name or style. It means that the proprietary concern by itself cannot be the plaintiff. (Judgment dated 15.06.2017 in C.S.No.150 of 2011 (M/S.ESS EMM ENTERPRISES (A Proprietorship concern) Vs M/s.Shell India Markets Private Limited & Another)

7.In ***Rasiklal Manikchand Dhariwal v. M.S.S.Food Products ((2012)2 SCC 196)***, the title of the plaintiff was described as follows:

“The plaint filed by the plaintiff describes the title of the plaintiff as follows:

*“Messrs M.S.S. Food Products,
Plot No. D, Sector E,
Sanver Road Industrial Area, Indore,
Through — Proprietor — Nilesh Vadhwani,
Son of Shri Ashok Vadhwani, aged 27 years,
Occupation — Business.””*

The Hon'ble Supreme Court held that such description of the plaintiff in the plaint at best may be called to be not in proper order inasmuch as the



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name of “Nilesh Vadhvani” must have preceded the business name in the cause title, and that it was not an illegality which went to the root of the matter.

8.In Executive Engineer v. Mousvy Industries Budgam(2023 SCC OnLine J&K 881), it was held as follows:

“ ... A suit by a proprietary concern of a sole proprietor or by assumed business name or style of a person seems to be maintainable, the only legal requirement being that when such a suit is filed, complete details of the owner of the proprietary concern or assumed business name should be disclosed in the plaint as required under Order 7 Rule 1 of CPC to establish the identity of the owner of the proprietary concern or the assumed business name.”

In the aforesaid case also the proprietary concern had been represented through the proprietor.

9.I had a look at the cause title of the C.S.No.150 of 2011. The plaintiff has been described as M/S.ESS EMM ENTERPRISES (a Proprietorship concern). In the cause title of the judgment of the Delhi High Court, the proprietary concern alone has been mentioned. In the



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case on hand, the proprietary concern has been shown as represented by its proprietor. That in my view would make all the difference.

10.It is interesting to note that the Hon'ble Punjab & Haryana High Court has taken a different view on this issue. After referring to the Rasiklal's Judgment, the Hon'ble Punjab & Haryana High Court in ***Radha Raman Industries vs. Manoj Trading Co. (RSA No.351 of 2016 dated 29.08.2017)***, held as follows:

“18. However, a bare perusal of this judgment also shows that the Hon'ble Supreme Court held the suit in that case to be legal although the same was in the name of the proprietary concern of the sole proprietor, but the concern had sued through its sole proprietor. Hence, that judgment of the Hon'ble Supreme Court cannot be interpreted to lay down, as absolute law, that the proprietary concern or the assumed name of person cannot come before the Court as plaintiff. Otherwise also, the observation of the Hon'ble Supreme Court has come only qua the bare provision of Order XXX, Rule 10, which of course, does not have enabling provision for the proprietary concern or the assumed name of a person to bring a suit. But the Hon'ble Supreme Court has not laid down it as a judicial precedent. Neither all the relevant provisions were argued before the



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Hon'ble Supreme Court nor has the Hon'ble Supreme Court considered the same for the purpose of creating a precedent on this point, because the Hon'ble Supreme Court had found the suit in that case to be, otherwise, legally brought and hence, maintainable.

19. A proprietary concern or assumed name of the sole proprietor, when arrayed as a defendant under Order XXX, Rule 10, would also get a right to file a counter claim under Order VIII, Rule 6-A of Code of Civil Procedure...

20. A bare perusal of provision contained in sub-clause (2) of Order VIII, Rule 6-A makes it clear that the counter claim filed by a defendant shall have the effect of a cross suit on behalf of the defendant. Therefore, if a proprietary concern, sued against Under Order XXX, Rule 10; has got a right to file a cross suit as a defendant under the above said provision. In such a situation, it shall be totally irrational to hold that the proprietary concern cannot file a suit as plaintiff. If an entity is treated as a legal person and a plaintiff for the purpose of cross suit then there is nothing to prevent such an entity to come as plaintiff in the first instance. Otherwise, also no specific provision in statutory law has been pointed out by the learned Counsel prohibiting a suit by a proprietary concern or the assumed



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business name or style of a sole person. On the contrary it is well settled law that the suit by the proprietary concern is a suit by its sole proprietor and the suit by the sole proprietor is a suit by his proprietary concern. Both are the same thing for the purpose of the proceedings before the Court of Law. Any 'person' is entitled to file a suit for his or its entitlements against the defendant unless the suit is prohibited by some specific provision of law. As per General Clauses Act, section 3 (42) even incorporation is not necessary for an entity to claim the status of a 'person' so even un-incorporated entity can file suit unless specifically prohibited by statutory law.

21. Hence, a suit by a proprietary concern of sole proprietor or by the assumed business name or style of a person is very much maintainable. However, since the sole proprietary concern or the assumed business name is owned by a single individual, so while filing a suit in the name of proprietary concern or assumed business name the complete details of the owner of the proprietary concern or assumed business name shall be required to be disclosed in the plaint as required under Order VII, Rule 1 of the Code of Civil Procedure to establish the identity of the owner of the proprietary concern or the assumed business name.



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22. In case of proprietary firm, if the relationship between the firm and the proprietor is clear and not in dispute then it does not matter whether the suit is brought in the name of the firm or the proprietor, which is one and the same thing. In the present case also the suit by the proprietary firm is through sole proprietor giving complete details. So the suit by the proprietary concern in the present case is maintainable.”

11.The case on hand is similar to the position obtained in Rasiklal's case. In view of the same, I hold that the misdescription has been set right by the impugned amendment. The order of the trial Court is sustained. Now that the amendment has been made, it is always open to the defendant to file an additional written statement.

12.The learned counsel for the revision petitioner states that the revision petitioner is presently abroad and that he is likely to return only on 13.09.2024. The petitioner is therefore granted four weeks from the date of receipt of copy of this order to file his additional written statement.

13.This Civil Revision Petition is dismissed. There shall be no



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order as to costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Issue order copy on 06.09.2024.

To

The Principal District Judge,
Karur.



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G.R.SWAMINATHAN, J.

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