BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.11.2023

Pronounced on : 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.2406, 3031, 3032 and 3033 of 2023
and
C.M.P.(MD)Nos.12472, 15606, 15608 and 15609 of 2023

Balamurugan ...Petitioner in all the petitions

Vs.

Mohanasundaravel ...Respondent in all the petitions

Common Prayer : These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders passed in I.A.No.14 of 2023 in O.S.No.18 of 2019 dated 10.08.2023 on the file of the Principal District Judge, Tirunelveli and I.A.Nos.2 of 2022, 2 of 2022 and 2 of 2022 in O.S.Nos.157 of 2018, 189 of 2018 and 179 of 2018 dated 21.11.2022 on the file of the Ist Additional District Judge, Tirunelveli and allow these petitions.

(in all the petitions)

For Petitioner : Mr.T.Selvan

For Respondent : Mr.S.Mani

COMMON ORDER

The revision in C.R.P.(MD)No.2406 of 2023 is directed against the order passed in I.A.No.14 of 2023 in O.S.No.18 of 2019 dated 10.08.2023 on the file of the Principal District Court, Tirunelveli, dismissing the application filed under Order 7 Rule 11 of the Code of Civil Procedure.

2. The revisions in C.R.P.(MD)Nos.3031 to 3033 of 2023 are directed against the orders passed in I.A.No.2 of 2022 in O.S.No.157 of 2018, I.A.No.2 of 2022 in O.S.No.189 of 2018 and I.A.No.2 of 2022 in O.S.No.179 of 2018 dated 21.11.2022 on the file of the I Additional District Court, Tirunelveli, dismissing the applications filed under Order 7 Rule 11 of the Code of Civil Procedure.

3. In all the revisions, the revision petitioner is the defendant and the respondent as plaintiff has filed the above suits for recovery of money, due on the promissory notes.

4. The case of the respondent/plaintiff in all the suits in brief as follows:-

(a) The respondent/plaintiff is a civil contractor, doing business in the name and style of Kathir Engineering Constructions. The revision petitioner/defendant is working as a Superintendent of customs and central excise at Trichy at the time of filing of the suits and he is a friend of the respondent/plaintiff. The revision petitioner/defendant's father, his wife and one another person had started a firm under the name and style of JAGUR Enterprises and doing business in zinc metal – import and sales.

(b) The revision petitioner/defendant approached the respondent/ plaintiff in the month of July-2015 and informed that he was in need of Rs.1.50 crores for the above said business. The respondent/plaintiff informed the revision petitioner/defendant that giving a sum of Rs.1.50 crores at one stroke is not possible for him and at that time, the revision petitioner/defendant has informed that the respondent/plaintiff can pay the said amount by installments of not less than of Rs.25 lakhs each from September-2015 and before the end of December 2015 so as to enable the revision petitioner/defendant to continue the said business. The revision petitioner/defendant came to the office of the respondent/plaintiff on 27.09.2015 and received first loan amount of Rs.25 lakhs and executed a demand promissory note in his favour. Thereafter, the revision petitioner/ defendant received Rs.25 lakhs thrice on 18.10.2015, 15.11.2015 and

29.11.2015 and received another loan amount of Rs.50 lakhs on 31.12.2015 and the revision petitioner/defendant has executed separate demand promissory notes in favour of the respondent/plaintiff in all the above four occasions.

(c) The respondent/plaintiff, as agreed by the revision petitioner/ defendant, had contacted the revision petitioner/defendant on 10.01.2016 over phone and requested to settle the amount. The revision petitioner/ defendant came to the office of the respondent/plaintiff and issued six cheques drawn in State Bank of India, Palayamkottai Branch for Rs.10 lakhs each favouring the respondent/plaintiff towards partial repayment of the total loan transactions. Believing the words of the revision petitioner/ defendant, the respondent/plaintiff presented all the cheques for collection on 13.01.2016 through his bankers State Bank of India, Palayamkottai, but all the cheques were returned through a memo dated 13.01.2016 for want of sufficient funds in the bank account of the revision petitioner/ defendant. The respondent/plaintiff, after issuing statutory notice, has initiated prosecution under Section 138 of Negotiable Instruments Act against the revision petitioner/defendant in S.T.C.No.82 of 2016 and the same is pending on the file of the Judicial Magistrate Court No.1, Tirunelveli. Since the revision petitioner/defendant has never paid any amount either towards interest or principal, the respondent/plaintiff was constrained to issue a legal notice dated 16.08.2018 calling upon the revision petitioner/defendant to settle the entire loan amount along with interest within 15 days of the receipt of the notice. The revision petitioner/defendant having received the notice on 20.08.2018 has neither issued any reply nor did he made any payment. Hence, the respondent/plaintiff was constrained to file a suit with respect to the first transaction held on 27.09.2015 and the same is pending in O.S.No.141 of 2018 on the file of the I Additional District Court, Tirunelveli. Thereafter, the respondent/plaintiff has filed three other suits for recovering the amounts due on the promissory notes executed by the revision petitioner/defendant on 18.10.2015, 15.11.2015 and 29.11.2015 and the same are pending in O.S.Nos.157 of 2018, 179 of 2018 and 189 of 2018 and the same are pending on the file of the I Additional District Court, Tirunelveli. The respondent/plaintiff has filed fifth suit in respect to the promissory note executed by the revision petitioner/defendant on 31.12.2015 for Rs.50 lakhs and the same is pending in O.S.No.18 of 2019 on the file of the Principal District Court, Tirunelveli.

5. The case of the revision petitioner/defendant is that even according to the respondent/plaintiff, the revision petitioner/defendant had borrowed a sum of Rs.1.50 crores on different dates, that the respondent/plaintiff had demanded Rs.1.50 crores from the revision petitioner/defendant on 10.01.2016, that the respondent/plaintiff has also sent the legal notice on 16.08.2018 demanding repayment of the entire loan amount of Rs.1.50 crores, that the cause of action arose to recover the loan amount of Rs.1.50 crores on 13.06.2016 itself, but the respondent/plaintiff has filed the first suit in O.S.No.141 of 2018 on 19.09.2018, that the revision petitioner/defendant ought to have prayed for recovery of entire loan amount of Rs.1.50 crores in the first suit itself, that the respondent/plaintiff has filed five suits on the basis of the same cause of action, that therefore, all the four subsequent suits except the first suit filed in O.S.No. 141 of 2018 are barred by Order 2 Rule 2 C.P.C. and that therefore, the revision petitioner/defendant was constrained to file the above applications under Order 7 Rule 11 C.P.C. for rejection of plaints.

6. The respondent/plaintiff has filed counter statement raising serious objections and further stated that the respondent/plaintiff has

issued single notice claiming the total loan amount due under five promissory notes executed by the revision petitioner/defendant and at the time of filing the suits, instituted separate suits on the basis of each promissory note, that the respondent/plaintiff has claimed the amount under the respective promissory notes along with interest and the respondent/plaintiff did not relinquish or omit any portion of the claim under law, that the suit in O.S.No.18 of 2019 was already decreed on 15.03.2021, that the above applications were filed only to protract the proceedings and that therefore, the applications are liable to be dismissed.

7. It is not in dispute that the suit in O.S.No.18 of 2019 was decreed *ex parte* on 15.03.2021, that the revision petitioner/defendant has filed an application in I.A.No.12 of 2022 for setting aside the *ex parte* decree along with an application to condone the delay in I.A.No.11 of 2021, that the application in I.A.No.11 of 2021 was allowed, but the application filed for setting aside the *ex parte* decree in I.A.No.12 of 2022 was ordered to be dismissed on 20.10.2022, that the revision petitioner/defendant has preferred an appeal in C.M.A.(MD)No.183 of 2023 before this Court and the same was allowed on payment of cost of Rs.25,000/- with a direction

to dispose of the suit within a period of four months and that thereafter, the revision petitioner/defendant has filed the above application in I.A.No. 14 of 2023 seeking rejection of plaint.

8. The main contention of the revision petitioner/defendant is that the pleadings in all the five suits are one and the same, that the respondent/plaintiff before filing of the suits has issued statutory notice under Section 138 of Negotiable Instruments Act dated 23.01.2016 and also issued pre-suit notice dated 16.08.2018, wherein, the respondent/plaintiff has demanded repayment of the entire loan amount of Rs.1.50 crores, that the respondent/plaintiff has no separate cause of action for each promissory note and the right to sue accrued to the respondent/plaintiff for the entire amount of Rs.1.50 crores only, that the respondent/plaintiff has requested the revision petitioner/defendant on 10.01.2016 to settle the entire amount of Rs.1.50 crores, that the revision petitioner/defendant has issued six cheques for Rs.10 lakhs each towards partial repayment of the loan amount, that the respondent/plaintiff has not sought for any leave to file the other suits for recovery of the amounts covered under the other promissory notes, that the reliefs claimed in the subsequent suits were

already available to the respondent/plaintiff even at the time of filing the first suit in O.S.No.141 of 2018 and that since the respondent/plaintiff has not claimed the reliefs claimed in the subsequent suits, in the absence of any leave to file the subsequent suits, all the four subsequent suits are hopelessly barred under Order 2 Rule 2 C.P.C.

9. The defence of the respondent/plaintiff is that the revision petitioner/defendant had executed five different promissory notes, 1st four promissory notes for Rs.25 lakhs each and the last one for Rs.50 lakhs on different dates and as such, the respondent/plaintiff had got five different cause of action on five different promissory notes and on that basis, he has filed five suits to recover the amount of Rs.1.50 crores, that the respondent/plaintiff has issued the legal notice claiming the entire amount of Rs.1.50 crores under five different promissory notes executed by the revision petitioner/defendant and at the time of filing the suits instituted separate suits on the basis of each promissory note and that therefore, the applications are legally not maintainable and are liable to be dismissed.

10. As rightly pointed out by the learned counsel appearing for the respondent, the respondent/plaintiff in all the suits has specifically averred

about the borrowal of loan amount on five occasions by the revision petitioner/defendant and the execution of five different promissory notes therefor. The respondent/plaintiff has issued the pre-suit notice demanding repayment of the entire loan amount due by the revision petitioner/defendant under five different promissory notes and no doubt, it's a consolidated legal notice. According to the revision petitioner/defendant, the above issuance of legal notice demanding the entire loan amount from the revision petitioner/defendant gives the cause of action for the respondent/plaintiff to file the suit for recovery of Rs.1.50 crores and as such, he ought to have filed the suit in O.S.No.141 of 2018 itself for the recovery of the entire loan amount. But as rightly contended by the learned counsel appearing for the respondent, the respondent/plaintiff has specifically averred the borrowal and the execution of the promissory notes on different dates gives separate cause of action for him to file the suits and that the issuance of consolidated pre-suit notice cannot be considered as single cause of action for filing the suit for recovery.

11. In Black's Law Dictionary, the expression "cause of action" has been explained as the fact or facts which give a person a right to judicial

relief. A cause of action, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. It is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. At this juncture, it is necessary to refer Order 2 Rule 2 C.P.C.

> "*2. Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*
> *(2) Relinquishment of part of claim - (2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.*
> *(3) Omission to sue for one of several reliefs - (3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."*

12. Order 2 Rule 2 makes it mandatory upon a plaintiff to mention every relief that they might be entitled arising from the same cause of action in their pleadings, i.e., the suit should include the whole claim with

respect to the cause of action. If a relief is omitted without the leave of the Court, such relief is barred and the same cannot be claimed in the subsequent suit. It is settled law that separate causes of action do not act as a bar and it is up to the plaintiff to either join these claims together or bring separate suits for each cause of action.

13. The learned counsel appearing for the revision petitioner has relied on the following judgments of the Hon'ble Supreme Court;

(i) 2014 4 L.W. 729
(Coffee Board Vs. M/s.Ramesh Exports Pvt. Ltd.):

"10. ..... In light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his claims before the Court in one suit and cannot omit one of the reliefs or claims except without the leave of the Court. Order 2 Rule 2 bars a plaintiff from omitting one part of claim and raising the same in a subsequent suit. (See: Deva Ram & Anr. vs. Ishwar Chand & Anr.[(1995) 6 SCC 733]). Furthermore, this Court in Alka Gupta v. Narendar Kumar Gupta [(2010) 10 SCC 141] stated that:

> *"The object of Order 2 Rule 2 of the Code is twofold. First is to ensure that no defendant is sued and vexed twice in regard to the same*

> *cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action."*

11. The bar of Order 2 Rule 2 comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; and when the plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and both the suits are between the same parties. Furthermore, the bar under Order 2 Rule 2 must be specifically pleaded by the defendant in the suit and the Trial Court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different. ...."

(ii) 2014 1 L.W. 1

(State Bank of India Vs. Gracure Pharmaceuticals Ltd):

"11. The above-mentioned decisions categorically lay down

the law that if a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2, CPC is based on the cardinal principle that defendant should not be vexed twice for the same cause.

12. Order 2 Rule 2, CPC, therefore, requires the unity of all claims based on the same cause of action in one suit, it does not contemplate unity of distinct and separate cause of action. On the above- mentioned legal principle, let us examine whether the High Court has correctly applied the legal principle in the instant case."

(iii) 2019 (4) CTC 610

(Pramod Kumar & another Vs. Zalak Singh & others):

"41. It is undoubtedly true that the law does not compel a litigant to combine one or more causes of action in a suit. It is open to a plaintiff, if he so wishes, however to combine more than one cause of action against same parties in one suit. However, it is undoubtedly true that the embargo in Order II Rule 2 will arise only if the claim, which is omitted or relinquished and the reliefs which are omitted and not claimed, arise from one cause of action. If there is more than one cause of action, Order II Rule 2 will not apply. It is undoubtedly also true that Order II Rule 2 manifests a

technical rule as it has the effect of posing an obstacle in the path of a litigant ventilating his grievance in the Courts. But as already noted, there is an equally important principle that no person shall be vexed twice on the same cause of action.”

14. In the last judgment referred above, the deceased sold some acres to the appellants and subsequently he sold the remaining extent to the appellants and that the respondents therein have earlier filed a suit challenging the first sale deed alleging that the land was a joint family ancestral property and the same was sold it for immoral purposes and subsequently they have filed the second suit challenging the second sale deed. The Hon'ble Apex Court has observed that it was open to the respondents to seek relief in respect of the second sale deed at the time of filing the first suit and as such, the suit is barred under Order 2 Rule 2 C.P.C. In the second decision referred above, the first suit was filed for recovery of money and the second suit was for damages and in that scenario, the Hon'ble Apex Court has held that the suit is barred under Order 2 Rule 2 C.P.C. But the above decisions cannot be applied to the facts of the present cases.

15. As already pointed out, the borrowal and the execution of the promissory notes on a particular date gives separate cause of action and since the revision petitioner/defendant has borrowed and executed promissory notes five times, filing of the five separate suit by the respondent/plaintiff cannot be found fault with and there is no bar or prohibition for the same. As rightly observed by the learned trial judges, the bar under Order 2 Rule 2 C.P.C. is not applicable to the case on hand and hence, the impugned orders dismissing the applications filed under Order 7 Rule 11 C.P.C. cannot be found fault with. Consequently, this Court concludes that all the revisions are devoid of merit and the same are liable to be dismissed.

16. On considering the entire facts and circumstances, as rightly contended by the learned counsel appearing for the respondent, the revision petitioner/defendant, by filing the above applications and the present revisions, have only been attempting to drag on the proceedings. Hence, the trial Courts are to be directed to dispose of the suits within the time stipulated.

17. In the result, these Civil Revision Petitions are dismissed. The trial Courts i.e., (O.S.No.18 of 2019 pending on the file of the Principal District Court, Tirunelveli and O.S.Nos.157 of 2018, 189 of 2018 and 179 of 2018 pending on the file of the I Additional District Court, Tirunelveli) are directed to complete the trial and dispose of the suits within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

20.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Principal District Court,
   Tirunelveli.

2. The I Additional District Court,
   Tirunelveli.

3.The Section Officer,
  VR Section,
  Madurai Bench of Madras High Court,
  Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)Nos.2406, 3031, 3032 and 3033 of 2023
and
C.M.P.(MD)Nos.12472, 15606, 15608 and 15609 of 2023

Dated : 20.02.2024