



C.R.P.(MD).No.2107 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.04.2024**

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.2107 of 2019

and

C.M.P(MD) No.10950 of 2019

N.Visaksenan Pillai @ Thanappan Pillai

... Petitioner/Respondent
Defendant

Vs.

K.Geetha

... Respondent/Petitioner
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.O.P.No.5 of 2015 in O.S.No.186 of 2016 on the file of the Sub Court, Kuzhithurai, dated 14.02.2019.

For Petitioner : Mr.V.M.Balamohan Thampi

For Respondent : No appearance



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ORDER

The defendant in O.S.No.186 of 2016 on the file of the Sub Court, Kuzhithurai is the revision petitioner herein.

2. The respondent herein as plaintiff has filed the above suit seeking damages to a sum of Rs.8,00,000/- from the defendant towards the medical expenses and the damage to the building sustained by her. The plaintiff had further prayed for a sum of Rs.1,50,000/- as damages for future medical treatment of the plaintiff from the defendant.

3. A perusal of the plaint indicates that, on 19.11.2010 at about 04.30 pm, the water tank located in the defendant's property had collapsed and fell upon the building of the plaintiff and thereby, causing damage to the building as well as causing grave injuries to the body of the plaintiff. According to the plaintiff, she had to undergo treatment for several days and she had incurred huge expenses. She had further contended that she has to undergo treatment in future also.



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4. The cause of action paragraph in the said suit reveals that, the incident has happened on 19.11.2010 and on 05.07.2014, the defendant had agreed to pay the damages and on 30.07.2014 on which the suit notice was issued and on 31.07.2014, a reply notice was issued. The suit has been filed on 28.10.2014.

5. At the time of filing of the suit, the plaintiff had filed I.O.P.No.5 of 2015 seeking exemption from payment of Court fee on the ground that, she is not able to pay the Court fee for realising the amount prayed for in the plaint. Originally, the said application was allowed by the Trial Court even before receipt of report from the concerned Tahsildar. The said order was challenged by the defendant in C.R.P(MD)No.2634 of 2016. This Court by an order, dated 23.10.2018 had set aside the order and remitted the matter back to the Trial Court with a direction to the Trial Court to consider the pauper application after receiving report from the concerned Tahsildar. After remand, concerned Tahsildar has filed a report confirming the indigency of the plaintiff. Based upon the said report, the Trial Court has once again allowed I.O.P.No.5 of 2015. Challenging the said order, the present revision petition has been filed by the defendant.



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6. According to the learned Counsel appearing for the defendant, admittedly, the alleged incident has taken place on 19.11.2010 and the present suit seeking damages have been filed on 28.10.2014. A perusal of the cause of action paragraph does not indicate any other date which could extend the period of limitation. Therefore, the suit is barred by limitation when it was filed on 28.10.2014. Order XXXIII, Rule 5 (f) of CPC., mandates the Court not to entertain an application to file a suit as a pauper when the suit is barred by any law. Therefore, according to the learned Counsel appearing for the revision petitioner, when the suit is clearly barred by limitation, the application of the plaintiff seeking permission to sue as an indigent person ought not to have been entertained by the Trial Court.

7. Though notice was served upon the respondent / plaintiff and name is printed in the cause-list, she has not chosen to appear either in person or through Counsel.

8. This Court proceeds to pass orders on merits after hearing the submissions of the learned Counsel appearing for the revision petitioner /



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defendant.

9. A perusal of the plaint indicates that the alleged accident has taken place on 19.11.2010 which has resulted in damage to the building and injuries to the plaintiff. A perusal of the cause of action paragraphs indicate that the defendant had agreed to pay damages on 05.07.2014. However, no document has been enclosed along with the plaint to establish the same. There is no specific article prescribing period of limitation for filing a suit for damages and therefore, the issue is covered under Article 113 of the Limitation Act, which prescribes a period of three years limitation from the date on which the right to sue accrues. In the present case, the right to sue has accrued on 19.11.2010 and the suit for damages has been filed on 28.10.2014 clearly beyond a period of three years. Therefore, considering Order XXXIII, Rule 5 (f) of CPC., the suit is clearly barred by limitation and the Trial Court ought to have considered the said contention raised by the defendant in his counter filed to I.O.P.No.5 of 2015.

10. Therefore, this Court is of the considered opinion that the suit being barred by limitation, the Court ought not to have exercised its powers under



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Order XXXIII, Rule 5(f) of CPC., and granted leave to the plaintiff to file a suit as an indigent person. The order passed by the Trial Court on 14.02.2019 in I.O.P.No.5 of 2015 in O.S.No.186 of 2016 is hereby set aside. The revision petition stands allowed. When a *prima facie* case is made out on the side of the defendant that the suit is barred by limitation, unless the plaintiff is directed to pay Court fee, the suit cannot be proceeded with. The plaintiff is directed to pay Court fee within a period of eight (8) weeks from the date of receipt of a copy of the order or else the plaint would stand rejected.

11. This Civil Revision Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

25.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1. The Sub Court,
Kuzhithurai.



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2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J.

BTR

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