



C.R.P.(MD)No.2462 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2462 of 2024
and
C.M.P.(MD)No.13813 of 2024

1.K.S.Nagai Maligai,
Represented through one of its partner
K.Kalaikumar
66-B, South Avani Moola Veethi,
Kundrakudi Athinam Complex,
Madurai.

2.K.Kalai Kumar

3.B.Senthil Kumar

... Petitioners / Petitioners / Defendants

Vs.

Siva Jewellers,
Represented through one of its partner,
S.Vignesh S/o.Sivaraman,
149/54, 1st Floor,
South Avani Moola Street,
Madurai-625 001.

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.08.2024 made in I.A.No. 2 of 2024 in C.O.S.No.3 of 2023 on the file of the Principal District Court, Madurai and allow the civil revision petition.



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For Petitioners : Mr.V.Malaiyendran
For Respondent : Mr.G.Prabhu Rajadurai
for Mr.S.T.Balarathinakumar

ORDER

Heard both sides.

2. Siva Jewellers filed C.O.S.No.3 of 2023 as commercial suit on the file of the Principal District Judge, Madurai for recovery of a sum of Rs.27,00,051/- with interest from the revision petitioners herein.

3. The case of the plaintiff is that there was a commercial transaction with the revision petitioners. The revision petitioners filed I.A.No.2 of 2024 for rejection of the plaint on the ground that the suit is hit by Section 69(2) of the Indian Partnership Act. The court below dismissed IA vide order dated 14.08.2024. Challenging the same, the present civil revision petition came to be filed.

4. Admittedly, Siva Jewellers is not a registered firm as on date. The learned counsel for the revision petitioners relied on the following decisions reported in **(2024 (5) CTC 185** (Chennai Law Firm rep. by Partner Vs. Reyvish



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Associates (P) Ltd., & **(2018) 12 SCC 580** (Farooq Vs. Sandhya Anthraper Kurishungal)) & **(2000) 3 SCC 250** (Haldiram Bhujawala Vs. Anand Kumar Deepak Kumar)) in support of his contention that the non-registration of the plaintiff firm is fatal to the suit.

5. I indicated to the learned counsel for the respondent that I am inclined to agree with the contention of the learned counsel appearing for the petitioners. There upon, the learned counsel for the respondent submitted that the plaintiff may be permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action after proper registration of the firm. My attention is drawn to the decision of the Hon'ble Supreme Court reported in **(2000) 3 SCC 250** (Haldiram Bhujawala Vs. Anand Kumar Deepak Kumar). Paragraph No.26 of the said decision reads as follows:-

“26. In fact, the Act has not prescribed that the transactions or contracts entered into by a firm with a third party are bad in law if the firm is an unregistered firm. On the other hand, if the firm is not registered on the date of suit and the suit is to enforce a right arising out of a contract with the third-party defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation and subject to the provisions of the Limitation Act. This is so even if the suit is dismissed for a formal defect. Section 14 of the Limitation Act will be available inasmuch as the suit has failed because the defect of non-registration falls within the words “other cause of like



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nature” in Section 14 of the Limitation Act, 1963.”

C.O.S.No.3 of 2023 on the file of the Principal District Judge, Madurai is dismissed as withdrawn with liberty to the plaintiff to file a fresh suit on the same cause of action after registering the plaintiff firm.

5. This Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

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

The Principal District Court, Madurai.



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G.R.SWAMINATHAN, J.

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