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C.R.P.(MD)No.1272 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1272 of 2023

and

CMP (MD) No. 6237 of 2023

N.Muthukrishnan

: Revision Petitioner/
Petitioner/Defendant

Vs.

Dr.T.Sridharan

: Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13/12/2021 in IA No. 174 of 2021 in OS No.122 of 2018 on the file of the Principal District Judge, Thanjavur.

For Petitioner : Mr.P.Ganapathi Subramaninan

For respondent : Mr.S.Saravanakumar

O R D E R

This civil revision petition has been filed seeking an order to set aside the fair and decreetal order, dated 13/12/2021 passed in IA No.174 of 2021 in OS No.122 of 2018 by the Principal District Judge, Thanjavur.



2. The facts in brief:-

A suit in OS No.122 of 2018 was filed by the respondent herein as plaintiff seeking the relief of recovery of Rs.90,00,000/- with 18% interest and costs. The defendant appeared, filed his statement, trial commenced. At this stage, the defendant namely the petitioner herein took out a petition in IA No.174 of 2021 seeking permission of the court to file additional written statement by condoning the delay. That petition came to be dismissed by the trial court.

3. Against which, this civil revision petition is preferred.

4. In the petition, the petitioner has stated the following facts:-

At the time of filing the original written statement, he was not in possession of certain documents and those were traced out only recently. So, the additional written statement.

5. He has further stated that in the written statement that there is no mentioning about the provisions of Indian partnership Act, 1932. So, for that



purpose, he wants to file the additional statement.

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6.It was resisted by the respondent/plaintiff stating that he was examined in chief, on 17/04/2021 and documents were also marked. A belated attempt is made by the petitioner. Now the additional statement contains totally different version from the original statement. In the quashment petition filed by the respondent, it is admitted that three cheques were received by the plaintiff, but the additional written statement proposed to be filed contains contra facts.

7.The trial court made elaborate discussion over that issue. It is observed that by way of filing the additional written statement, in effect, they want to withdraw the earlier admission and the contradictory averments. On that account, it dismissed it.

8.The learned counsel appearing for the petitioner would submit that no new facts are sought to be brought on record, which are contradictory or in the form of withdrawing the admission. The basic and fundamental principles are that the parties should not be permitted to disown the admission already made or withdrawing the admission or taking up different or contradictory stand.



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With regard to the contradictory stand, it is well settled that the defendant is entitled to take contradictory stand, but both must be sustainable on facts. So, the contradictory stand may not be a reason for rejection. But disowning the earlier statement will be the serious issue, which is to be taken note by the trial court.

9.The plaint reads that the plaintiff and the defendant being the close relationship started a catering & restaurant business under the partnership firm called 'Hotel Sri Annapoorna' in Kumbakonam, by the partnership agreement, dated 11/09/2017. That was also registered, on 22/09/2017. Difference of opinion arose between them over the accounting management. Misappropriation was suspected by him, by agreement dated, 23/05/2018, the defendant agreed to pay Rs,90,00,000/- towards payment of the investment amount and for goodwill, etc. To discharge that liability, he issued 3 cheques for various amounts. Those cheques were presented for payment, later, dishonoured.

10.The statement originally filed reads that the partnership agreement is admitted. But filing of the civil suit is prohibited as per the agreement. He was



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running a business, sent letters, the plaintiff joined as a partner. They also made allegation over the transfer of money in the account. Three cheques were obtained in the police station under threat and coercion. The compromise, dated 23/05/2018 is also denied. STC No.2592 of 2018 was filed by the plaintiff before the Kayamkulam Magistrate Court under section 138 of the Negotiable Instruments Act, mentioning the cheque amount; the suit is also barred due to multiplicity of proceedings. Now in effect, it is stated that under threat and coercion, the cheques for Rs.90,00,000/- was obtained by the plaintiff, which is not supported any liability.

11.Now in the additional written statement, he has stated that only the plaintiff started business and without knowing any thing, the defendant was inducted. He denied the partnership agreement itself; The plaintiff expected huge profit, but, it could not be achieved; So, they entered into the Hotel and caused damage and took up the articles. The retirement of the plaintiff in the partnership Firm is also denied; The issue between the parties will be resolved under the provisions of the Indian Partnership Act; the suit is not maintainable.



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12.In effect, the defendant wants to take a contradictory stand with regard to the partnership agreement. But at the same time, saying that it must be resolved, as per the terms of the Indian Partnership Act, 1932, may be the contradictory stand, but not reconcilable in nature.

13.Another stand taken by the defendant is that 3 signed cheques were stolen by the plaintiff from the Hotel, which is the act against the earlier suit. Those cheques were obtained by force and coercion. This cannot be construed as 'contradictory stand'. Both are not reconcilable in nature. More particularly, PW1 was examined in chief. The alleged additional written statement filed will cause prejudice to the case of the plaintiff. So on that account, the trial court dismissed the petition. I find absolutely no valid ground is made out by the petitioner to interfere into the order of the trial court.

14.In the result, this civil revision petition is stand **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No
Internet:Yes/No
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22/03/2024



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To,

- 1.The Principal District Judge,
Thanjavur.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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