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C.R.P. (PD) .No.25 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.25 of 2025

and

C.M.P.No.206 of 2025

M.Damodaran,
Proprietor,
M/s. Leadtek India,
No.5, Bajanai Kovil Street,
Mannurpet,
Chennai – 600 050.

Also At

Plot No.1, Township Colony,
Ambattur Kuppam,
Opp Telephone Exchange,
Near Sriram Apartment,
Thiruvallur District,
Chennai – 600 058.

.. Petitioner

Vs.

M/s. Ganesh Gold Thread Manufacturing Co.,
4E, Century Plaza,
No.560-562, Mount Road,
Teynampet, Chennai – 600 018,
Represented by its Partner,
Ganesh Patwari

.. Respondent



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the decree and judgment passed in I.A.No.4 of 2024 in C.O.S.No.432 of 2022 on the file of the Principal Commercial Court at Egmore and reject the plaint in the above suit with exemplary cost.

For Petitioner : Mr.V.P.Raman
for Mr.D.G.Hariprasath
For Respondent : Mr.Arvind Subramaniam
Senior Counsel
for M/s.Kannammai Meiyappan

ORDER

This civil revision petition challenges the order passed by the Principal Commercial Court at Egmore in I.A.No.4 of 2024 in C.O.S.No.432 of 2022 dated 02.12.2024.

2.The civil revision petitioner is the defendant in the suit.

3.For the sake of convenience, the parties shall be referred to as plaintiff and defendant.



4.The plaintiff presented C.S.SR.No.20025 of 2010 before this Court.

It is a suit for recovery of a sum of Rs.17,66,747/- together with interest at the rate of 24% per annum from the date of presentation of plaint till the date of realization and for costs.

5.The case of the plaintiff is that the defendant was a tenant under him and had defaulted in payment of rentals. The last rent was paid in April, 2007. After issuance of a Lawyer's notice on 16.07.2008, which was duly acknowledged by the defendant, since the demands made therein was not paid by the defendant, the plaintiff came forth with the aforesaid suit.

6.Along with the plaint, the plaintiff took out an application seeking leave to sue under Clause 12 of the Letters Patent. It was pleaded since a part of cause of action has arisen within the jurisdiction of this Court, this Court could grant leave to institute the suit. This application for leave to sue was numbered as A.No.2728 of 2010. Notice was ordered in this application. It was allowed on 03.08.2010. Thereafter, the suit seems to have gone into hibernation.



7.Sometime in the year 2011, the counsel for the plaintiff had issued a notice to the Registry, stating that the learned Judge who heard the matter after the leave to sue was granted, had remarked that the case has to be transferred to the City Civil Court. This is on account of the enhancement of the pecuniary jurisdiction of the City Civil Court at Madras. Even thereafter, the plaint did not see the light of the day nor were the papers sent to the City Civil Court. (Mr.V.P.Raman, representing Mr.D.G.Hariprasath, states that the letter was not issued on 30.10.2011, but on 30.10.2019).

8.After the suit was transferred to the City Civil Court at Madras, the plaintiff paid the Court fee on three dates, namely, 22.02.2021, 11.08.2021 & 29.09.2021. On the first two dates, he had paid Rs.32,140/- and on 29.09.2021, he had paid the balance Court fee of Rs.20,863/-. In all, he had paid a sum of Rs.53,003/- as Court fee.

9.The City Civil Court had called upon the counsel to file an application under Section 149 of the Civil Procedure Code. The counsel had made an endorsement on 27.04.2021 as follows:



“Deficit Court Fee has been paid along with the plaint, a petition U/s 149 CPC may not be necessary since the entire court fee has been paid at the time of presenting the plaint.”

10.This endorsement had initially not convinced the Registry of the City Civil Court at Chennai. Therefore, it was returned for the same purpose on 16.08.2021. Finally the suit was taken on file before the City Civil Court as O.S.No.7746 of 2021.

11.Subsequently with the creation of the Commercial Court at Egmore, the suit stood transferred to the file of that Court. Summons were served on the defendant. The defendant did not raise the issue of Court fee in his written statement. However, in paragraph No.20 of the written statement, he has raised a plea that the suit is barred by time. On the basis of these pleadings, the parties were pushed to trial. Both sides agree that the evidence of P.W.1 has been concluded. As of now, it is listed for continuation of cross examination of D.W.1.



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12.At this stage, the defendant took out an application for rejection of
plaint. The plea of the defendant is that the suit was filed only in August,
2021 and therefore, it is barred by time. It was further pointed out that the
tenancy was with one Mr.B.L.Patwari and not with the present plaintiff
namely, M/s.Ganesh Gold Thread Manufacturing Company. This application
was numbered as I.A.No.4 of 2024. The plaintiff filed a counter in the
application stating that the suit was originally presented before the High
Court in C.S.SR.No.20025 of 2010 and that the bundle was transferred to the
City Civil Court at Chennai on 11.08.2021 and was numbered as
O.S.No.7746 of 2021. He further pleaded that the deficit Court fee had been
paid by the respondent.

13.I should point out here that the deficit Court fee arises on account of
the fact this Court used to charge 1% of the suit claim at the relevant time and
the City Civil Court was charging 7.5% on the suit claim. The plaintiff
pleaded that the bundle was lost by the Registry of this Court and hence, it
took time to transfer the bundle to the City Civil Court at Chennai. Finally, he



pointed out that the question of limitation is a mixed question of law and fact and therefore, it cannot be a subject matter for rejection of plaint.

14.The learned Trial Judge agreed with the counsel for the plaintiff and dismissed the application in and by way of an order dated 02.12.2024. Challenging the said order, this revision.

15.When the matter came up for admission before me, I heard Mr.V.P.Raman for Mr.D.G.Hariprasath. After going through the papers, I requested Mr.V.P.Raman to serve the entire set of papers on the counsel who represented the plaintiff in the Court below. Accordingly, entire set of papers were served on Ms.Kannammai Meiyappan.

16.I heard Mr.V.P.Raman for Mr.D.G.Hariprasath for the civil revision petitioner and Mr.Arvind Subramaniam, Senior Counsel for M/s.Kannammai Meiyappan for the respondent. I have gone through the records.

17.The narration of the facts show that leave to sue has been granted by



this Court on 03.08.2010. Thereafter, the papers went missing from this Court. The plaintiff was also not very diligent. After a considerable period of time had lapsed from the time leave had been granted, he approached the original side to trace out the papers. Thereafter, the original side also transferred the papers to the City Civil Court. Mr.V.P.Raman points out that as per the Tamil Nadu Civil Courts Act and the Chennai City Civil Court (Amendment) Act, 2010, only the suits can be transferred and the transfer by this Court of the application and papers filed therewith is an erroneous one. On the merits of the application, both Mr.V.P.Raman and Mr.Arvind Subramaniam reiterated the contentions they placed before the learned Trial Judge.

18.I should point out that the City Civil Court had been convinced with the Court fee that had been paid and it had taken the suit on file and it also numbered it.

19.An application for rejection of plaint ought to have been filed at that stage itself. The defendant kept quiet from 2021 to 2024. It is after the trial



had commenced, the said application had been filed. As rightly contended by the plaintiff, limitation is a mixed question of law and fact. Unless and until, the reading of the plaint itself discloses that the suit is barred by limitation, a Trial Court dealing with an application under Order VII Rule 11 of the Civil Procedure Code or a Revisional Court should not interfere with the same. The reading of the plaint in this case does not show the claim to be a time barred one.

20.I should also remember that *resjudicata* not only applies between two separate suits, but also between two stages of the same suit. If the issue of Court fee had been raised at City Civil Court at Chennai, perhaps that Court would have been in a position to take immediate steps to set right any mistake that had arisen.

21.Furthermore, whether a suit had been affixed with some Court fee or with full Court fee, it requires a perusal of the records. Sitting in a revision, I am not in a position to do so. In addition, the parties have cooperated with the Trial Court and have commenced evidence in the suit. Therefore, I am not



inclined to consider the plea of limitation, in the facts of this case as a ground for rejection.

22.Mr.V.P.Raman's submission that the suit could not have been transferred under the Tamil Nadu Civil Courts and Chennai City Civil Court (Amendment) Act, 2010, and that the suit itself is barred by limitation, can be addressed by the learned counsel for the defendant before the Court below. Not only does the Limitation Act call upon the Court under Section 3, to decide the issue of limitation, whether it is pleaded by a party or not, but, in the light of the averments in paragraph No.20, it is clear that the defendant has taken a plea of limitation.

23.In the light of the above discussions, while sustaining the order of the learned Trial Judge in I.A.No.4 of 2024, I am inclined to pass the following order:

(i)The Court shall frame the issue of the limitation, if not already framed;



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(ii) If the defendant has not cross examined the plaintiff on the issue of payment of Court fee, the Trial Court shall grant **one** opportunity to the defendant to cross examine the plaintiff on that issue;

(iii) The Court at the time of pronouncing of judgment, it shall deal with the plea on transfer of suits and applications under the Chennai City Civil Court (Amendment) Act, 2010, as well as the issue of limitation;

(iv) Needless to add that the plaintiff will also be entitled to let in evidence in order to substantiate his case.

24. Accordingly, this Civil Revision Petition is dismissed with the above observations. Consequently, the connected Miscellaneous Petition is closed.

20.01.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To
The Principal Commercial Court,
Egmore, Chennai.



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V.LAKSHMINARAYANAN, J.

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