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C.R.P.(PD).No. 404 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No. 404 of 2025

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C.M.P.No. 2510 of 2025

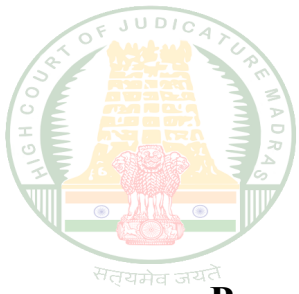
Uzhavan Tex,
Rep by its Proprietor,
P.Subramani
S/o. Palanisamy
No.115/42C, Cauvery Road,
Veerappanchatram,
Erode District – 638 004.

...Petitioner

Vs.

Samy Ayyappa Sizing Mill,
Rep. by its Partner,
S.Jaganathan,
S/o.Subramanian,
Lakshmi Garden Sulli Kadu,
Veerappanchatram,
Erode District – 638 004.

...Respondent



C.R.P.(PD).No. 404 of 2023

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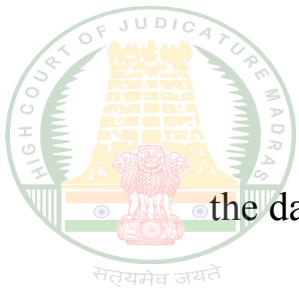
Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 13.11.2024 made in IA.No.1 of 2023 in COS.No.38 of 2022, on the file of the Principal Sub Court, Erode.

For Petitioner : Mr. D.Gopal

ORDER

Aggrieved by the dismissal of their application under Order VII Rule 11 (d) and Section 151 of the Code of Civil Procedure, to reject the plaint in COS.No.38 of 2022 on the file of the Principal Sub Court, Erode, the defendant is before this Court. The short facts are herein below set out.

2. The respondent had filed a suit in O.S.No.466 of 2019 on the file of the Sub Court, Erode, for a recovery of a sum of Rs.6,97,297/- with future interest at the rate of 12% per annum for Rs.6,18,537/- from



C.R.P.(PD).No. 404 of 2022

the date of the suit till realisation.

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3. The plaintiff's case was that the plaintiff / respondent firm is running a sizing mill and the defendant / petitioner concern was a partnership firm. The petitioner was running a power loom factory and they used to send the materials for sizing to the plaintiff on a job work basis. The two had been having business relationship from 03.04.2015 to 09.11.2017. In the course of this business a sum of Rs.6,18,537/- fell due from the petitioner to the respondent. The respondent claim interest on the said amount. Since the request and demand which included legal notice, the respondent filed a suit in question for the relief setout therein.

4. A written statement has been filed by the petitioner herein in the month of September 2019, wherein they admitted the business relationship with the respondent. However, they denied that they owed a sum of Rs.6,18,537/-. The petitioner would contend in their written statement that they had transaction with one K.C.Rajendran, partner of



the respondent firm from 03.04.2015 till 09.11.2017 and during this period the said Rajendran would send the yarn for sizing under a job work.

5. The said Rajendran had agreed to pay the amount due for the shortage of yarn after sizing. In the normal course shortages do not occur. However, due to the negligence of the respondent and his workers such shortages would occur and it is for this reason that Rajendran the partner of the respondent firm had agreed to compensate the shortage.

6. The petitioner had also put forward a contention that the partner Rajendran and the manager of the respondent firm would send a coolie bills which was settled by the petitioner, for which no receipts were issued. According to the petitioner the respondent was due and owing a sum of Rs.9,66,566/- towards shortage of yarn. It is also contended that the partnership agreement would indicate that the respondent had become one of the partner of the respondent firm only



on 01.09.2017 and was therefore not aware about the transaction that took place prior to that date.

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7. Thereafter, an additional written statement came to be filed on January 2023, in which the petitioner had raised a plea that the Court had no jurisdiction to proceed with the Trial as the respondent firm was not registered one as contemplated under Section 69 of the Partnership Firm. They had also pleaded that the suit was barred under the provisions of Section 12 A of the Commercial Courts Act, which mandates pre institution mediation and settlement. They had also pleaded limitation.

8. Simultaneously, the petitioner taken out an application for rejecting the plaint on the ground of firm not being registered and the mandate under 12 A of the Act not being complied with.

9. The respondent filed a counter inter alia contending that the partnership firm had been registered on 26.04.2013 and this application



was made only with an intent of dragging the proceedings.

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10. The learned Principal Sub Judge, Erode, after considering the legal position and documents proceeded to dismiss the said application. Against which the petitioner is before this Court.

11. The only ground which is argued was that the firm was not registered as contemplated under Section 69 of the Partnership Act. The learned counsel would submit that the suit has been filed on the basis of the re-constituted partnership deed and not upon the original partnership deed which was registered.

12. Heard the learned counsel appearing for the petitioner.

13. Section 69 of the Act, would read as follows:

“69. Effect of non-- registration (1) No suit to enforce a right arising from a contract of or conferred by this Act shall be instituted in any court by or on behalf of



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C.R.P.(PD).No. 404 of 2022

any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firm as partners in the firm

3) The provisions of sub section (1) and (2) shall apply also to a claim of Set - off or other proceeding to enforce a right arising from a contract, but shall not affect -

a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or

b) The powers of an official assignee, receiver of Court



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C.R.P.(PD).No. 404 of 2022

under the Presidency, towns insolvency Act 1909, or the Provincial insolvency Act, 1920, to realise the property of an insolvent partner.

4) (This section shall not apply a) To firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which by notification under section 56, this chapter does not apply, or b) to any suit or claim of set off not exceeding one hundred rupees in value which in the presidency towns, is not of a kind specified in section 19 of the Presidency shall cause Court Act, 1882 or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provisional small cause Courts Act 1887. or to any proceeding or execution in other proceeding incidental to or arising from any such suit or claim.



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14. Therefore, from a reading of the above provisions it is clear that a suit cannot be filed by or on behalf of the firm against the third party unless the firm is registered and the person suing are or have been shown in the Register of firm as partner of the firm.

15. In the instant case the respondent / plaintiff has been represented by its partner S.Jaganathan. S.Jaganathan was shown as a partner in the agreement dated 01.09.2017 and he continued to be a partner after its re-constitution in the year 2017. Therefore, the suit filed by the respondent would not come within a bar of Section 69 (2) of the Act.

16. The petitioner have also contended that the Court has not followed mandate of Section 12 A of the Commercial Courts Act. The suit was originally instituted before the Sub Court at Erode and after the formation of the Commercial Court, pursuant to the Act, the suit was transferred to the file of the Principal Sub Court, Erode.



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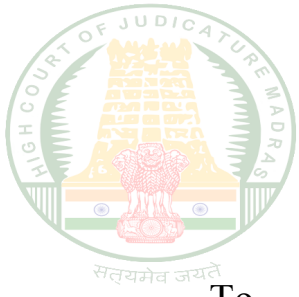
17. Section 15 (3) of the Act specifically provides that where the suit has been transferred to the Commercial Court under Sub - Section 1 or 2, the provisions of the Commercial Courts Act would apply only to those procedures which had not been contemplated at the time of transfer. In the instant case a written statement and additional written statement had been filed. Therefore, a bar under Section 12 A of the of the Commercial Courts Act, would not operate for the aforesaid reasons.

18. I see no reasons to interfere with the order passed by the learned Principal Subordinate Judge, Erode. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

12.02.2025

Index : Yes/No
Internet : Yes/No

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C.R.P.(PD).No. 404 of 2023

To
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The Principal Sub Court,
Erode.



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C.R.P.(PD).No. 404 of 2025

P.T. ASHA, J,

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C.R.P.(PD).No. 404 of 2025

12.02.2025