



CRP.Nos.1907 & 1908 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 19.06.2025

Order pronounced on : 27.06.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.1907 & 1908 of 2023
& Tr.CMP.No.890 of 2024
& CMP.Nos.12116 & 12121 of 2023 & 19490 of 2024

CRP.Nos.1907 & 1908 of 2023:

S.Seshadri

..Petitioner

Vs.

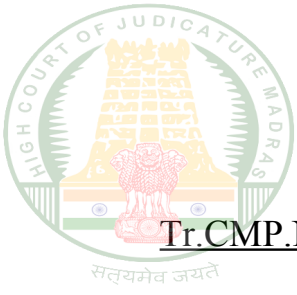
M.Ekambaram

..Respondent

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order and decree dated 21.11.2022 passed by the learned III Additional District and Sessions Judge, Poonamallee, Thiruvallur District in I.A.No.2 of 2020 and I.A.No.1 of 2019 respectively in O.S.No.214 of 2017.

For Petitioner : Mr.A.K.Sriram
Senior Counsel
for Mr.T.K.S.Gandhi

For Respondent : Mr.C.Umashankar
for Mr.K.Venkateswaran



CRP.Nos.1907 & 1908 of 2023

Tr.CMP.No.890 of 2024:

M.Ekambaram

..Petitioner

Vs.

1.S.Seshadri

2.The Sub-Registrar,
Ambattur.

..Respondents

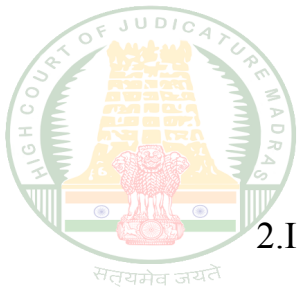
Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C, to withdraw O.S.No.287 of 2018 on the file of the I Additional District and Sessions Court, Tiruvallur and transfer the same to the file of the III Additional District and Sessions Court, Poonamallee.

For Petitioner : Mr.C.Umashankar
for Mr.K.Venkateswaran

For Respondent : Mr.A.K.Sriram
Senior Counsel
for Mr.T.K.S.Gandhi

COMMON ORDER

These revisions have been preferred by the defendant in O.S.No.214 of 2017, aggrieved by the orders passed in I.A.No.2 of 2020 and I.A.No.1 of 2019 respectively.



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2.I have heard Mr.A.K.Sriram, learned Senior Counsel for Mr.T.K.S.Gandhi, learned counsel for the petitioner in CRP.Nos.1907 & 1908 of 2023 and respondent in Tr.CMP.No.890 of 2024 and Mr.C.Umashankar, learned counsel for Mr.M.K.Venkateswaran, learned counsel for the petitioner in Tr.CMP.No.890 of 2024 and respondent in CRP.Nos.1907 & 1908 of 2023.

3.The Trial Court has allowed an application in I.A.No.1 of 2019, which was filed under Section 151 of CPC to consider the application and take up the case on merits, which was rejected on 30.11.2017, as against which, CRP.No.1908 of 2023 has been filed. In I.A.No.2 of 2020, the Trial Court has enlarged the time under Section 149 of CPC for remittance of Court Fees as against which, CRP.1907 of 2023 has been filed.

4.Mr.A.K.Sriram, learned Senior Counsel appearing for the petitioner in the revision petitions and respondent in transfer petition would submit that the Trial Court has grossly erred in allowing these applications which were *per se* not maintainable in the eye of law. He would further submit that the suit was filed for the relief of specific performance of an agreement of sale dated 01.11.2017. The suit was numbered on the file of the Principal District Judge, Tiruvallur and thereafter, it was transferred to the file of the III Additional



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District Judge, Poonamallee, Thiruvallur. He would invite my attention to the

valuation made by the respondent/plaintiff in the suit and contend that as against higher Court Fee payable in respect of the suit value of Rs.13,25,000/-, only a sum of Rs.39,750/- was paid and hence, the respondent had taken out an application to remit the deficit Court Fee. The Court granted three weeks time from 01.11.2017, which expired on 21.11.2017. The case was adjourned to 30.11.2017, on which date, the Trial Court has rejected the plaint. However, on the same day, the plaintiff has requested the Trial Court to permit remitting of the deficit Court Fee and according to plaintiff, later in the day, after the plaint was rejected, the deficit Court Fee was paid and in order to formally enlarge the time from 22.11.2017 to 30.11.2017, an application was filed in I.A.No.2 of 2020.

5.The learned Senior Counsel, Mr.A.K.Sriram would further state that once the specific order had been passed by the Trial Court granting time only up to 21.11.2017 and the case was posted on a subsequent day, namely 30.11.2017, it would not entitle the plaintiff to seek payment of the deficit Court Fee beyond 21.11.2017. The learned Senior Counsel would further contend that the application itself was not maintainable. He would further state that once the plaint has been rejected, the very same Court cannot pass an order virtually

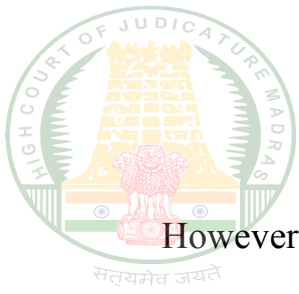


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sitting on appeal or revision over on its own order. With regard to the other revision, the learned Senior Counsel would state that the prayer in I.A.No.1 of 2019 was in the nature of seeking an order to consider the application and take up the case on merits, which was rejected on 30.11.2017. The learned Senior Counsel referring to the application would submit that such a prayer itself was not maintainable in the eye of law and again, such an order would amount to the very same Court exercising appellate or revisional powers and the same is unknown to law and procedure. He would further state that if the Court is convinced with the grounds of challenge in these revisions, then there would be no necessity to pass any orders in the Tr.CMP.No.890 of 2024 which has been filed seeking joint trial of the said suit in O.S.No.214 of 2017, along with another suit filed by the revision petitioner which is pending in O.S.No.287 of 2018 before the Additional District Judge, Tiruvallur. He would therefore pray for the revisions being allowed.

6.Per contra, Mr.C.Umashankar, learned counsel appearing for the respondent in the revision petitions and petitioner in transfer petition would submit that the plaintiff has filed the suit for specific performance of an agreement of sale and in order to make up deficit Court Fee, an application was taken out and time was also granted to make payment of the deficit Court Fee.



However, the plaintiff, being an aged person, was not able to ensure payment of the Court Fee in time and in any event, he would submit that the deficit Court Fee has been made up on 30.11.2017 itself and he would submit that the Trial Court has only rendered substantial justice to the parties by enlarging the time to pay deficit Court Fee and by recalling the order rejecting the plaint.

7.The learned counsel would further submit that all other issues of limitation, delay in filing the suit, lack of readiness and willingness can always gone into during the trial of the suit and are not germane for deciding the present application. He would further submit that the order passed by the Trial Court does not deserve interference and in view of the fact that the revision petitioner has filed O.S.No.287 of 2018 seeking the reliefs of declaration and vacant possession, it would be just and proper to jointly try both the suits. He would therefore pray for dismissal of the civil revision petitions and the transfer petition being allowed.

8.I have carefully considered the submission advanced by the learned counsel on either side.

9.It is not in dispute that in the suit for specific performance, the plaintiff



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did not pay the necessary and appropriate Court Fee at the first instance. An application was taken out for making of the deficit Court Fee. The Trial Court permitted the deficit Court Fee to be paid on or before 21.11.2017 and the suit was posted for hearing / compliance on 30.11.2017. It is an admitted position that the deficit Court Fee was not paid on or before 21.11.2017. Even when the suit was called for compliance on 30.11.2017, the deficit Court Fee had not been paid and as a natural consequence, the plaint came to be rejected.

10.It is the case of the respondent/plaintiff that a mention was made to the learned Judge that the plaintiff was willing to pay the Court Fee on the same day and that thereafter the deficit Court Fee was also paid on the same day and in order to recall the order rejecting the plaint and to formally enlarge the time for payment of the Court Fee, two applications have been taken out. I find that the respondent/plaintiff had earlier approached this Court in CRP.No.719 of 2018. In the said revision, a docket order dated 30.11.2017 in O.S.No.214 of 2017 was challenged. The said docket order is the order that has rejected the plaint on 30.11.2017 for non payment of the deficit Court Fee, despite the time granted to make up the deficit by 21.11.2017. This Court dismissed the said revision petition on 27.02.2018, giving liberty to the plaintiff to take out appropriate application before the Court below. Despite the said order having



been passed on 27.02.2018, no such liberty was not availed of by the plaintiff for almost two years, until February 2021 when I.A.No.2 of 2020 came to be filed praying for enlargement of time till 30.11.2017, on which date, the deficit Court Fee had been paid.

11.The effect of the plaint being rejected results in a decree under Section 2(2) of CPC. Once the plaint is rejected, the Court that passed the said order become *functus officio* and cannot entertain any application, be it for recalling the order rejecting the plaint or for enlargement of time for making up the deficit Court Fee. The only remedy that was open to the plaintiff was to move the Appellate Court challenging the rejection of the plaint. Instead, the plaintiff has chosen to file two applications, one for enlarging the time and the other 'for considering the application and take up the case on merits, which was rejected on 30.11.2017'. I am afraid such applications as prayed, are clearly not maintainable in the eye of law.

12.Unfortunately, the Court has proceeded to entertain the said applications filed by the plaintiff and has erroneously allowed the applications as well holding that deficit Court Fee has been paid on 30.11.2017 and that this Court had given liberty to the plaintiff to move appropriate application. It



appears that the Trial Court has been swayed by the liberty granted by this court. The liberty, if any granted by this Court in the earlier revision petition, would not clothe the plaintiff with a blanket opportunity to take out an application of any nature at his whims and fancies. Any such application can only be in accordance with law and necessarily maintainable as per settled practice and procedure. The applications filed by the plaintiff before the very same Court which rejected the plaint are clearly unsustainable and the moment the plaint was rejected, the Court become functus officio and cannot entertain any application in the nature of what was sought for by the plaintiff.

13. Even though the learned Senior Counsel pointed out the delay on the part of the plaintiff at every stage, right from the alleged execution of the agreement of sale, which delay continued even after the initiation of the proceedings, I am not inclined to deal with these issues since they may not be relevant for the purposes of deciding the present revisions, though they have been relied on and brought to my notice only in order to show the lack of diligence and bonafides on the part of the plaintiff. In any event, when the liberty granted by this Court does not entitle the plaintiff to seek for setting aside an order rejecting the plaint which results in a decree under section 2(2) of CPC, the very same Court ought not to have entertained the applications. Even



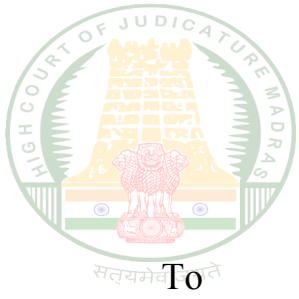
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if this Court had granted liberty, the respondent can avail of the same only in accordance with law and if it is permissible, legally.

14.In view of thereof, I am inclined to set aside the orders of the Court below. Accordingly, the Civil Revision Petitions stand allowed the order dated 21.11.2022 in I.A.No.2 of 2020 & I.A.No.1 of 2019 respectively in O.S.No.214 of 2017 on the file of the III Additional District and Sessions Judge, Poonamallee, Thiruvallur, are hereby set aside. In view of the revisions petitions being allowed and as a result, the order rejecting the plaint is restored, there is no necessity for considering Tr.CMP.No.890 of 2024 and the same is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

27.06.2025

Speaking/Non-speaking order
Index : Yes/No
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1.The III Additional District and Sessions Judge,
Poonamallee, Thiruvallur.

2.The I Additional District and Sessions Court, Thiruvallur.

3.The Sub-Registrar,
Ambattur.



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CRP.Nos.1907 & 1908 of 2023

P.B.BALAJI.J.

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Pre-delivery order made in
CRP.Nos.1907 & 1908 of 2023
& Tr.CMP.No.890 of 2024
& CMP.Nos.12116 & 12121 of 2023 & 19490 of 2024

27.06.2025