

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
24.03.2025

PRONOUNCED ON
23.04.2025

CORAM

THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.No.90 of 2025
in C.S.No.116 of 2024

G.Sreenivas

Applicant(s)

Vs

1.M.Vaigai Selvan

2.Usha

Respondent(s)

For Applicant(s) : Mr.V.L.Janardhanan
for M/s.T.M.Naidu & Co

For Respondent(s): Mr.K.Venkateswaran for RR1 & 2

ORDER

This application has been filed by the defendant to reject the plaint under Order VII Rule 11(d) as vexatious with illusory cause of action and barred by limitation.

2) Heard Mr.V.C.Janardhanan, learned counsel appearing on behalf of M/s.T.M.Naidu and Co. learned counsel appearing for applicant and

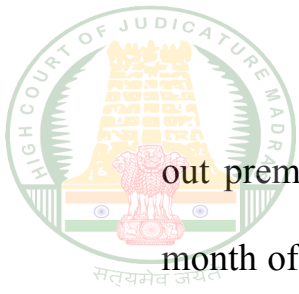


Mr.K.Venkateswaran, learned counsel appearing for respondents.

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3) Mr.V.C.Janardhanan, learned counsel appearing for the applicant would submit that the suit itself is barred by Order II Rule 2 of CPC that apart it also hit by law of limitation. He would submit that the respondents/ plaintiffs had approached this applicant for the lease of the property for running a restaurant as early as in the year 2008. The lease was originally for a period of 5 years. Thereafter, the plaintiffs have also taken an additional space in the second floor of the same premises. The respondents/ plaintiffs had taken a loan from the Indian Bank for carrying out the interior works and other development works for running their business. The applicant and his mother had given their consent to the Indian Bank for permitting them to carrying out such interior works, which the first respondent takes it to be a guarantee that has been given by the applicant. He would further submit that the said amount is not refundable and there is no written agreement to the same. Therefore, the present suit seeking for the recovery of the said amount is nothing but the abuse of process of law.

4) He would further submit that the respondents/ plaintiffs were not successful in their business and therefore, they had inducted third party, however, with the consent of the applicant to run a restaurant in a place that had been leased out to the respondents/ plaintiffs. He would submit that the leased



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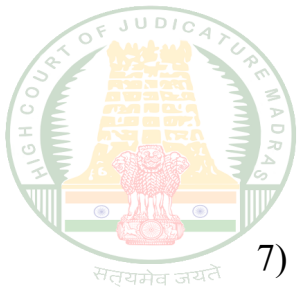
out premises was vacated and handed over to the applicant/ defendant in the month of January 2024 and in fact the respondent/ plaintiff had instituted a suit in O.S.No.1511 Of 2024 which is pending on the file of the Additional City Civil Court-III seeking for the relief of permanent injunction and for recovery of money. The cause of action for filing of the said suit has also been given in detail, given which also included a sum of Rs.75,00,000/- that is borrowed by the respondent/plaintiffs with the consent of the applicant and his mother. On the very same set of cause of action the present suit had been filed by the respondent/ defendants seeking to recover the said loan obtained by them along with the other advances without obtaining the leave of the Court, as prescribed under Order II CPC. He would submit that when the respondents/ plaintiffs had a cause of action for filing the suit while he had filed the earlier suit, also impleading the applicant, it would only mean that while filing the first suit, the respondents/ plaintiffs had relinquished their right if any against the applicant. He would submit that the said submission is without prejudice, as the applicant/ defendant is also not obligated to refund the loan amount taken by the respondents/plaintiffs for carrying out the interior works. He had also relied upon the judgment of the Hon'ble Apex Court reported in ***AIR 2011 SCC 860*** and ***2013 (1) SCC 625*** in support of his contention.

5) With regard to the issue of limitation, the learned counsel for the applicant/ defendant would submit that the tenancy came into being in the year



2008 and the respondents/ plaintiffs had taken a loan for putting up the interior work for running his restaurant and he had been running the restaurant only until 2013 and thereafter, the restaurant is being run by the third parties as sub-leases of the respondents/ plaintiffs which was consented to by the applicant/ defendant. If at all any claim has to be made for refund of the interior works, he ought to have made it at least within three years of the lease period of the lease entered between the applicant and the respondents. Therefore, he would submit that the suit itself is hit by the law of limitation and prays this Court to reject the plaint.

6) Countering his arguments, Mr.K.Venkateswaran, learned counsel appearing for the respondents/ plaintiffs would at the outset submit that the suit is not barred by the Order II Rule 2 of CPC. He would submit that the earlier suit in the City Civil Court is for the recovery of money from the sub-leases of the respondent/ plaintiff which is based upon the subsequent agreements entered between the applicant, respondent and third parties. The present suit is based upon the agreement that had been entered upon between the applicant and the respondent. Therefore, the earlier suit cannot be held to be a bar for the present suit and there is no relinquishment of the right on the side of the respondent/ plaintiff for prosecuting the applicant/ defendant. That apart, he would submit that the issues raised by the applicant are all matter of trial and cannot be decided at this stage.



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7) He would further submit that the issue of limitation is a mixed question of law and fact. Admittedly, even according to the applicant the possession of the property was only handed over in the year 2024 and therefore, only from that date the cause of action for filing the present suit had arisen as the respondent/ plaintiff would be entitled to seek for refund of the amount spent for interior decoration left to the benefit of the applicant/ defendant only at the time of vacating and therefore, he would pray this Court to dismiss the application and direct the applicant to contest the suit. The Learned counsel for the respondent further contends that the present suit could not have been instituted before the City Civil Court as it is beyond the pecuniary jurisdiction of that Court and therefore, even a leave from the Court which do not have pecuniary jurisdiction is not necessary. Therefore, there is no bar for him under the Order II Rule 2 nor there is relinquishment of any part of the relief which the respondent/ plaintiff is entitled to.

8) I have considered the rival submissions made by the respective parties and perused the materials available on record.

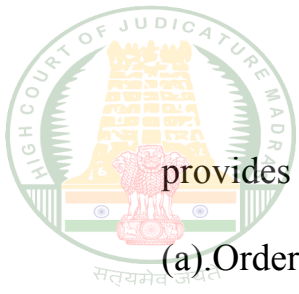
9) The primordial issue of Order II Rule 2 of CPC which has been vehemently contended by the learned counsel for the applicant, is a issue which would have to be decided first. Since, the said provision is in the nature of a



prohibition of a claim against a party by another under certain circumstances as that may lead to an abuse of process of law and dragging a litigant unnecessarily to a proceeding before a Court. Order II Rule 2 of CPC envisages that when a party makes a claim against another, the same ought to have been made in the proceedings initiated by him at the first instance.

10) The scheme of Order II would envisage that a suit should be framed so as to bring about a final decision upon the subjects of dispute between the parties in order to prevent further litigation. Order II Rule 2 mandates that the suit should include whole of the claim which the plaintiff is entitled to make in respect of a cause of action against the defendant and is also entitled to relinquish any portion of his claim to bring the suit within the jurisdiction of a Court, when such relinquishment is made, either by omission or with an intention. Then in respect of the said portion omitted or relinquished, the plaintiff loses his right to sue for the same. It also further envisages that if a person is entitled for more than one relief on the same cause of action, he shall with the leave of the Court omit/ not sue for a particular claim and if he had failed to take such leave, he shall not thereafter sue for any relief so omitted.

11) Further the scope of Order II is also expanded to joining of cause of action of various individuals either to sue or to be sued for a similar relief, even though the cause of action may be different. The Civil Procedure Code also



provides for a set off or a counter claim under Order VIII Rule 6 and Rule (6)

(a). Order VIII Rule 6 envisages a defendant in a suit to seek a set off against the plaintiff on the same cause of action. Order VIII Rule (6)(a) entitles a defendant to make a claim against the plaintiff in the very same suit even though, the dispute between the parties arises out of a different cause of action. Order VIII Rule 6 (a) is an exception to the territorial jurisdiction but is only confined to the pecuniary jurisdiction. From a conjoint reading of these two provisions, it could be seen that the scope and object of CPC is not to drive the litigant to multiple litigations and to confine themselves to resolve their disputes in a single litigation.

12) Now coming to the facts of the present case, there is no dispute with regard to the relationship of the parties. The respondent/ plaintiff had filed a suit in O.S.No.1511 of 2024 before the Additional City Civil Court-III, Chennai against the defendant herein along with two others. The prayer in the said suit is as follows:-

“(a) To pass an order of Permanent injunction restraining the Defendants, their men, agents or any person authorized by them from in any manner interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs except by due process of law;

(b) To direct the defendants 1 and 2 to pay a sum of Rs.21,00,000/- being the arrears of rent, TDS and other payments to the Plaintiff;



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(c) To direct the defendants 1 and 2 to pay the damages for the use and occupation of the suit scheduled property at the rate of Rs.2,50,000/- per month from the date of the plaint till the date of vacating the suit scheduled property;

(d) To grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice...”

On the following cause of action :-

“...16. The cause of action for this suit arose at Chennai when the plaintiffs had become a tenant in respect of the suit scheduled property under the 3rd and 4th defendant on a monthly rent of Rs.60,000/- and a sum of Rs.32 lakhs as advance, when the plaintiffs had approached the banker for loan for his project namely Vaigai Restaurant Project and obtained a loan to the tune of Rs.75 lakhs from Indian Bank T.Nagar Branch, when the 3rd and 4th defendant had given their consent for sanction the loan to the plaintiffs on 29.05.2008, when the plaintiffs approaches the 3rd and 4th defendant to renovate the entire building and the plaintiffs had started a business under the name and style of Vaigai Chettinad restaurant in the tenanted premises, on 06.07.2016, the 1st defendant had approached the plaintiffs to take over the business of the plaintiffs, the plaintiffs had entered into joint business agreement, on 30.08.2018 a hire rental agreement entered into between the plaintiff and the 1st defendant and a sum of Rs.2,50,000/- to be paid by the 1st defendant to the plaintiff out of which a sum of Rs.85,000/- to be paid

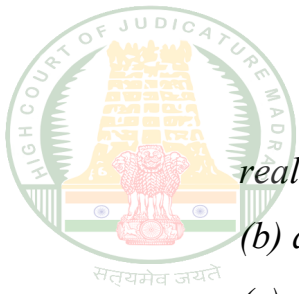


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to the 3rd and 4th defendant as a rent, when the 1st defendant had entered into a rental agreement dated 05.10.2018 with the said the 4th defendant along with the plaintiffs and the same was renewed on 05.10.2020 for a further period of two years which expires on 04.10.2022, when the 1st defendant for the purpose of carrying on the said business had taken the assistance of the 2nd defendant for running the hotel business and rental agreement was entered on 05.10.2022 for a period of 12 months upto 04.10.2023, when the plaintiffs had spent a sum of Rs.13,00,000/- to rectify and rebuilt the pipelines of the building, when the 2nd defendant had paid the proportionate rent to the plaintiffs till October, 2023 when the defendants had made various shortage payment resulted in arrears of sum of Rs.21,00,000/- to the plaintiffs and further arrears of rent from October 2023 till this January 2024 amounting to the tune of Rs.10,00,000/- in all sum of Rs.31,00,000/- and after deducting advance amount a sum of Rs.21,00,000/- is payable by the defendants, when the defendants had obstructed the plaintiffs from entering into the suit schedule property, on 04.01.2024, the 1st plaintiff had given a complaint before the Joint Commissioner of Police, Gandhi Nagar Chennai- 600 016, on 11.01.2024 another complaint was also given before the Commissioner of Police, Greater Chennai and subsequently...”

13) The present suit had been filed for the following relief on the following cause of action:-

“...(a) directing the defendants to pay the plaintiff a sum of Rs.1,49,39,256/- (Rupees One Crore, forty nine lakhs, thirty nine thousand, two hundred and fifty six only) together with interest at the rate of 18% per annum from the date of plaint till the date of



realisation.

(b) directing the defendants to pay the cost of this suit; and

(c) pass such further or other orders as may deem fit and proper in the circumstances of the case and thus render Justice... ”

and the cause of action for the present suit is as follows,

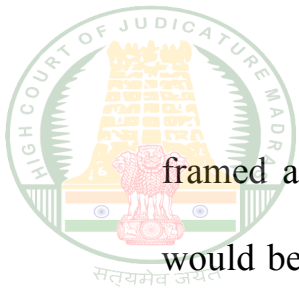
...17. The cause of action for the suit arose at Chennai within the jurisdiction of this Hon'ble Court, on 09.05.2008 when the 2nd defendant had entered into lease deed with the plaintiffs in respect of the 1st floor of the property being Door No.1, Prakasam Street, T.Nagar, Chennai-17, on 09.05.2018 when the defendants had entered into lease agreement with 1st plaintiff in respect the 1st and 2nd floor of the aforesaid property on a monthly rent of Rs.60,000/- and payment of Rs.32,00,000/- as advance, on 18.09.2008 when the 1st plaintiff had obtained the license for running the restaurant under the name and style of Vaigai Chettinad Restaurant, on 23.06.2008 when the plaintiffs had obtained license from the Fire and Rescue Department, Chennai South Division vide License No.5135/A1/08, on 29.05.2008 when the defendants had written a letter to the Manager Indian Bank, T.Nagar Branch asserting their no objection to the planned alternations and the renovations by the plaintiffs in the suit property, on 02.06.2008 when the Indian Bank, T.Nagar Branch had sanctioned the project loan for the plaintiffs for running the restaurant, when the plaintiif paid an advance amount of Rs.5,00,000/- for the ground floor portion and defendants not able to provide the ground floor portion, on 31.05.2009 when the defendant had issued cheque for the repayment towards Rs.5,00,000/- and requested the plaintiffs to add a sum of Rs.2,00,000/- towards the advance amount of Rs.32,00,000/-, when the 1st defendant had



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introduced Mr.A.Karupaiyya son of Andiyappam to assist the plaintiffs in the business, on 06.07.2016 when the plaintiffs had taken the assistance of M/s.Komal Enterprise Pvt. Ltd., to run the business, on 30.08.2018 when the M/s. AKS Enterprise had approached the plaintiffs to take over the business and entered into Hire Rental Agreement with the plaintiffs and the defendants, on 31.08.2018 when M/s.Komal Enterprise Pvt. Ltd., had sent letter to the plaintiffs affirming the fact that they had vacated the tenanted premises and handover the vacant possession of the premises to the plaintiffs, on 05.10.2018 when the M/s. AKS Enterprise, rep by its Partner Mr.G.Saravna Kumar had entered into a Rental Agreement with the 2nd defendant along with the plaintiffs on 05.10.2022, when the M/s. AKS Enterprise took the assistance of M/s.Dea Foods thereupon entered into Rental agreement, on 28.11.2023, the Indian Bank T.Nagar Branch had issued a statement that the project loan was cleared by the Plaintiffs, when M/s.Dea Foods had prevented the plaintiffs from entering into the tenanted premises, on 04.01.2023 when the plaintiffs gave complaint before the Joint Commissioner of Police, Gandhi Nagar, Chennai- 16, on 11.01.2024 when the plaintiffs gave complaint before the Commissioner of Police, Greater Chennai and the plaintiffs was assigned with C.No.228/COP/Visitors/2024, when the plaintiffs had instituted a civil suit in O.S.No.1511 of 2024 on the file of III Additional City Civil Court at Chennai as against the defendants and others, on 19.01.2024 when the defendants had issued a legal notice to the plaintiffs, on 20.02.2024 when the plaintiffs had given reply notice to the said legal notice and subsequently...

14) It is the case of the respondent/ plaintiff that as the instant suit was



framed against the plaintiff cannot be filed before the City Civil Court as it would be beyond its pecuniary jurisdiction. The suit filed before the City Civil Court is for a relief only against the first and second defendants and not against the defendants in the instant suit. Since, the pecuniary jurisdiction with regard to the claim against the first and second defendants therein was within the jurisdiction of that City Civil Court, suit was initiated against them before that City Civil Court, but, whereas, against the defendants in the instant suit pecuniary jurisdiction fell within the jurisdiction of this Court and therefore, the suit had been instituted before this Court and therefore, there is no necessity to seek leave of that Court in instituting that suit by reserving the right of the respondent/ plaintiff to sue this defendant.

15) In this Court's considered view, such an argument would go against the basic concept/ the object in which Order II of the CPC had been made. If so is the case of the respondent/ plaintiffs they ought to have filed a composite suit against all the parties before this Court. He had admitted to have omitted the relief against the defendants in the instant suit as it is beyond the pecuniary jurisdiction of the City Civil Court. A reading of of the plaint before the City Civil Court in O.S.No.1511 of 2024 does not disclose any such averment that had been made by the respondents/ plaintiffs. Only a relief could be omitted with a leave of the Court, however the conduct of the respondent/ plaintiff in not suing the applicant/ defendants herein is not an act of omission but it could



only be deemed to be an act of relinquishment since, he had not made any such averments of omission and had sought the leave of the Court, but had consciously filed a suit before a Court limiting his prayer to the pecuniary jurisdiction of the Court which would only amount to relinquishment of a portion of his claim to bring the suit within the jurisdiction of that Court. Therefore, this Court is unable to accept the claim of the respondent/ plaintiff that there has been a wilful omission to sue, for the simple reason that for such omission leave have to be sought for, even if the said Court did not have pecuniary jurisdiction to deal with the claim.

16) Further, a reading of the cause of action in both the suits would indicate that the claim had been made by the respondent/ plaintiff based upon the lease agreement that had been entered into between him and the defendants and also of the loan that had been taken by him from the Indian Bank, which he seeks to recover in this suit against the defendant, therefore, this Court do not have any hesitation to hold that the suit is barred by the principles of Order II Rule 2 of CPC as the respondent/ plaintiff had relinquished a part of claim to institute a suit before the City Civil Court against the defendants.

17) For the aforesaid reasons, the application to reject the plaint is allowed and consequently, the suit stands dismissed. However, there shall be no order as to costs.



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K.KUMARESH BABU., J

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Pre-Delivery Order in
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