

C.R.P.(MD).Nos.2847 & 2853 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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RESERVED ON: 27.02.2025

DELIVERED ON: 04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).Nos.2847 & 2853 of 2024
and CMP(MD).Nos.16278 of 2024 and 16289 of 2024**

CRP(MD).No.2847 of 2024

Sangam Sahasrabudhe
S/o.Mukund Sahasrabudhe
Power holder of the Managing Director
M/s.Reliance Industries Limited
Registered office at
3rd Floor, Maker Chambers IV
222, Nariman Point, Mumbai 400 021

....Petitioner/Petitioner
1st Defendant

Vs

1.P.Ravindran

...1st Respondent/1st Respondent/Plaintiff

2.Balasubramanian
Managing Director
Ms/.ESP Asia Pvt.Limited
No.10, 17, 1st floor, Neco Chamber, Plot No.48
Sector II CBD Belapur
Navi Mumbai 400 614 (also at)
No.3, Sreehari, Plot No.11
Sector No.40, Nerul, Navi Mumbai 400 706
Maharashtra State.

1/18



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3.The Managing Director

Ms/.ESP Synergy (MD) SDN BHD

E-10-2, Plaza Mount, Kiara

No.2, Jalankiara, 50480 Kuala lumpur

Malaysia (also at)

No.67, Julian Raja Chulan

Kuala lumpur, Federal Territory of Kuala Impur

Malaysia

4.The Managing Director

M/s.The RECRON(M)

SDN BHD, Nilai, Malaysia

Office at Level 9, Wisma Goldhill 67

Jalan Raja Chulan

50200 Kuala Lumpur

Malaysia

....Respondents 2 to 4/Respondents 2 to 4
/Defendants 1 to 3

CRP(MD).No.2853 of 2024

Sameer Thacker

S/o.Ashwin Thacker

Office at Level 9, Wisma Goldhill 67

Janan Raja Chulan

50200 Kuala Lumpur

Malaysia

Representing for the Managing Director

M/s.The RECRON (M)

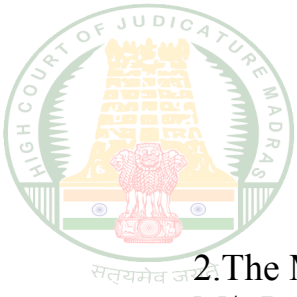
SDN BHD, Nilai, Malay

....Petitioner/Petitioner
4th Defendant

Vs

1.P.Ravindran

...1st Respondent/1st Respondent/Plaintiff



C.R.P.(MD).Nos.2847 & 2853 of 2024

2.The Managing Director
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Malaysia (also at)
No.67, Julian Raja Chulan
Kuala lumpur, Federal Territory of Kuala Lumpur
Malaysia

....Respondents 2 to 4/Respondents 2 to 4
/Defendants 1 to 3

PRAYER In CRP(MD).No.2847 of 2024: Civil Revision Case is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and order and decreetal order in I.A.No.3 of 2023 in C.O.C.No.3 of 2023 dated 26.03.2024 on the file of the Principal District Judge, Kanyakumari at Nagercoil and allow the civil revision petition.

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C.R.P.(MD).Nos.2847 & 2853 of 2024

PRAYER In CRP(MD).No.2853 of 2024: Civil Revision Case is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and order and decreetal order in I.A.No.1 of 2023 in C.O.C.No.3 of 2023 dated 26.03.2024 on the file of the Principal District Judge, Kanyakumari at Nagercoil and allow the civil revision petition.

For Petitioner : Mr.K.Mahesh
in CRP.No.2847 of 2024

: Mr.K.Mahesh
For Mr.J.Kingslin
in CRP.No.2853 of 2024

For Respondents :Mr.V.Murugan
for R1 in both revisions

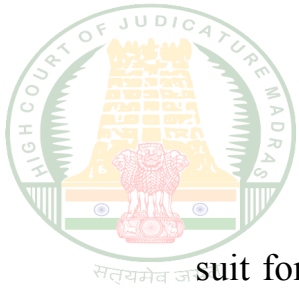
: R2 to R4 given up
in both revisions

COMMON ORDER

These two revision petitions have been filed by the 1st and 4th defendants in C.O.S.No.3 of 2023 on the file of the Principal District and Sessions Court, Kanyakumari at Nagercoil challenging the dismissal of I.A.Nos.1 and 3 of 2023 by the trial Court.

(A)Facts leading to the filing of these revision petitions are as follows:

2.The first respondent herein as plaintiff had filed the above said



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suit for the relief of recovery of a sum of Rs.39,22,000/-. It is the case of the plaintiff that the fourth defendant company is a sister concern of the first defendant company. The first defendant company had directed the fourth defendant to issue a letter of intent to the second defendant company for the purposes of installation of mechanical and piping works for six spinning lines at Malaysia. The second defendant which is the sister concern of the third defendant and the first defendant have jointly formed the fourth defendant company for mobilisation of man power and technical staff from India to Malaysia for erection and commissioning of six spinning lines at a lesser cost.

3.It is the further contention of the plaintiff that he received an offer letter from the third defendant company on 16.07.2011 for a period of one year as Branch Manager to be stationed at Malaysia. He was promised to pay a monthly salary of Malaysian Ringgit 20000/RM per month during the contract period of one year. Though he received first month salary in December 2011, thereafter the salary was not paid from January 2012 to July 2012. Before leaving India, the third defendant had promised that the plaintiff's dues would be credited to his bank account in India.



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4.After reaching India, there was no response from the defendants despite several e-mails and phone calls and request letters. Finally the plaintiff had approached Indian embassy at Malaysia by way of his request dated 04.07.2024. Since there was no response, the plaintiff had filed WP(MD).No.22399 of 2015 (P.Ravindran Vs. The Secretary, Ministry of Overseas Indian Affairs (Emigration Division) and others) on 11.12.2015. The said writ petition was disposed of on 10.11.2022 granting liberty to the plaintiff to pursue his remedy before the proper forum. The plaintiff had further contended that he had approached the District Legal Services Authority Kanyakumari at Nagercoil on 31.03.2023. The defendants 1 and 3 did not enter appearance and the defendants 1 and 4 after entering appearance stated in writing, that they are not inclined to take part in mediation. Therefore, the present suit was filed seeking recovery of money from the defendants.

5.Pending suit, the first defendant had filed I.A.No.3 of 2023 and the fourth defendant had filed I.A.No.1 of 2023 under Order 7 Rule 11 of C.P.C to reject the plaint on the following grounds:

a)The claim of the petitioner for arrears of salary is for the period between January 2012 to July 2012. Whereas the suit



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has been filed only on 17.04.2023 which is clearly barred by limitation. The writ petition before the High Court was also filed only after the period of limitation has got expired. Therefore, filing or disposal of the writ petition on 10.11.2022 cannot be cited as a ground for extension of period of limitation.

b)The alleged cause of action for the plaintiff has arisen only in Malaysia. No apart of cause of action has arisen within the jurisdictional limits of the Principal District Court, Kanyakumari.

c)The letter of offer was given to the plaintiff only by the third defendant. There is no employer employee relationship between the first and fourth defendant on one side and the plaintiff on other side. The gate-pass issued by the fourth defendant cannot establish the employer employee relationship. Hence, there is no cause of action as against the defendants 1 and

d)The claim for salary is not a commercial dispute and therefore, the suit cannot be tried by commercial Court.

6.A counter was filed by the plaintiff contending that the offer letter and other communications were received by the plaintiff within the jurisdiction of the Principal District Court, Kanyakumari and therefore,the



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said Court has got jurisdiction. It was further contended that since the plaintiff was employed as a Branch Manager for carrying out installation operations, the said dispute is only a commercial dispute. It was further contended that the suit has been filed within a period of three years from the date on which the writ petition was disposed of by the High Court which granted liberty to pursue proper remedy. The first and fourth defendants have engaged the second and third defendants for mobilisation of man power. The first and fourth defendants being principal employers, certainly the cause of action is available as against them also.

7.The trial Court after considering the submissions made on either side, has arrived at a finding that in the suit there appears to be no cause of action arising out of any commercial contract. The trial Court without going into the issue of limitation, has proceeded to hold that the plaint cannot be rejected in part as against the defendants 1 and 4 alone. Based upon the said findings, the trial Court has dismissed the application filed by the defendants 1 and 2 under Order 7 Rule 11 of C.P.C. Challenging the same, the present civil revision petition has been filed by the concerned defendants.



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(B)Contentions of the learned counsels appearing on either side:

8.According to the revision petitioners, the money suit filed by the plaintiff relates to the period between January 2012 to July 2012. The suit having been filed in the year 2023 is clearly barred by limitation even on the face of the plaint. The writ petition was filed only on 11.12.2015 which is after expiry of the period of limitation for filing a suit. Therefore, the plaintiff cannot take advantage of the pendency of the writ petition before the High Court for seeking exclusion of the period of limitation.

9.The learned counsel appearing for the revision petitioners had further contended that no cause of action has arisen within India and even as per plaint averments, salary has not been paid by the third defendant for the services rendered by the plaintiff at Malaysia. In such circumstances, the plaint ought to have been rejected. The learned counsel had further contended that the non-payment of salary to an employee cannot be categorized as a commercial dispute for being tried by Principal District Court/Commercial Court.

10.The learned counsel for the petitioners had further contended that the second and third defendants have been set exparte and they have

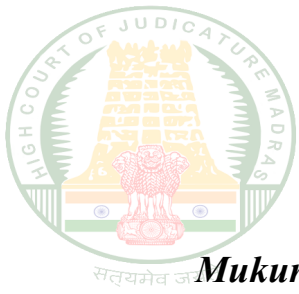


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not evinced any interest in the suit proceedings. In such circumstances, the defendants 1 and 4 should not be harassed to undergo trial in a suit ex facie/relinquish. The learned counsel had extensively relied upon a judgment of the Hon'ble Supreme Court reported in **(2020) 7 SCC 366 (Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) and others)** wherein the Hon'ble Supreme Court has held that when a suit is barred by limitation, the Court can invoke Order 7 Rule 11(d) to reject the plaint. The learned counsel also relied upon the judgement of the Hon'ble Supreme Court reported in **(2022) 12 SCC 641 (Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others)** to contend that when the relief sought for in the plaint cannot be granted, the only option is open to the Court is to reject the plaint.

11.The learned counsel for the petitioner laid emphasis upon the judgment of our High Court reported in **2022 SCC Online Mad 5105 (Shivnarayan Sabu Vs. Sabu Trade Private Limited represented by its Director)** to contend that Section 8 of Commercial Courts Act cannot override the constitutional powers of High Court under Article 227 of Constitution of India. He had further relied upon the judgment of the Hon'ble Supreme Court reported in **2024 SCC Online SC 3844 (Shri**



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Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati Udayan

Raje Pratapsinh Maharaj Bhonsle and another) to impress upon the Court that though the plea of limitation is a mixed question of law and fact, where it is clear from the plaint averments, that the suit has been barred by limitation, the Court should not hesitate in granting the relief of rejection of plaint. Hence, he prayed for allowing the revision petition.

12.Per contra, the learned counsel appearing for the respondents herein had contended that the first and fourth defendants are the principal employers and therefore, they are liable to pay the salary of the plaintiff. In such circumstances, it cannot be contended that there is no cause of action as against the defendants 1 and 4. He had further contended that the suit has been filed for recovery of money for being employed at Malaysia. All the communications have been addressed to the plaintiff only within the jurisdiction of the Principal District Court, Kanyakumari. Therefore, the contention that no cause of action has arisen within India or within the jurisdiction of Principal District Court, Kanyakumari is not legally sustainable. The learned counsel for the respondent herein had further contended that the writ petition was filed on 31.07.2014 before this Court and it was disposed of on 10.11.2022 with liberty to pursue the remedy



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before the proper forum. The suit for recovery of money has been presented on 17.04.2023. The cause of action being continuous in nature, the suit cannot be considered to be barred by limitation.

13.The learned counsel for the respondent herein had further contended that defendants 2 and 3 have already been set exparte and there is a likelihood of a decree being passed as against those defendants. In such circumstances, the plaint cannot be rejected in part as against the defendants 1 and 4 herein.

14.The learned counsel for the respondent had further contended that even assuming that without admitting the suit is not of commercial in nature, that would not result in rejection of plaint but only result in return of plaint to the appropriate Court. Hence, he prayed for sustaining the order passed by the trial Court.

15.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

16.A perusal of the plaint averments reveal that the plaintiff has received a call letter from the third defendant company for being employed as a Branch Manager for carrying installation work at Malaysia. The



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petitioner has received his first month salary in December 2011 and he was not paid from January 2012 to July 2012. The third defendant company is the sister concern of the second defendant company. Both these companies have not participated in the pre-litigation meditation as contemplated under Commercial Courts Act. They have already been set exparte in the suit. Therefore, it is clear that the defendants 2 and 3 have not questioned the prayer made in the plaint on the ground of limitation or lack of cause of action.

17.It is also not the case of the defendants 1 and 4 that the plaintiff has already been paid salary for the relevant period. It is the specific case of the defendants 1 and 4 that the salary has to be paid only by the third defendant. As pointed out supra, the third defendant has already been set exparte in the suit.

18.The question now that arises for consideration is whether the plaint can be partly rejected as against the defendants 1 and 4 who are contesting the proceedings.

19.The Hon'ble Supreme Court in a judgment reported in **(2018) 11 SCC 780 (Sejal Glass Limited Vs. Navilan Merchants Private Limited)** in Paragraph Nos. 7 and 8 has held as follows:



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“7.However, in Kalepu Pala Subrahmanyam v. Tiguti Venkata Peddiraju and others, a single Judge referred to Venkata Rangiah Appa Roa V.Secy.of State and then held that the suit was barred by time in respect of only certain items of property and not in respect of others. Despite this, it was held that since the plaint as a whole should have been rejected, the baby was thrown out with the bathwater, and the entirety of the plaint and not merely the properties against which the suit could not proceed (as it was barred by limitation), was rejected.

8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.”

20.The Hon'ble Supreme Court in a judgment reported in **(2019)**

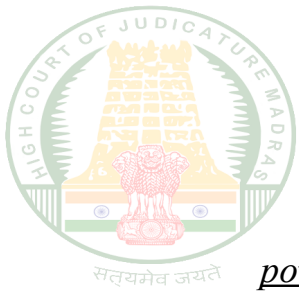
7 SCC 158 (Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another) in Paragraph Nos.12 and 14 has held as follows:



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“12.Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses(a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

14.A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No.1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief “cannot be entertained” in exercise of power under Order 7 Rule 11(d) of CPC. That



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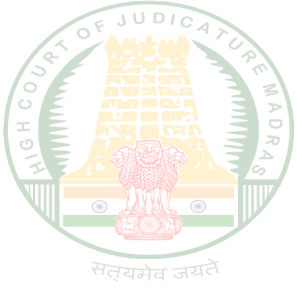
power is limited to rejection of the plaint as a whole or not at

21.In view of the categorical finding of the Hon'ble Supreme Court in the judgments cited supra, it is clear that the plaint cannot reject as against the defendants 1 and 4 alone, especially when the defendants 2 and 3 have remained exparte. The plaint has to be rejected as a whole or it should proceed as a whole for the trial. The defendants 1 and 4 are always entitled to raise the issue of limitation, lack of cause of action and other defences raised in Order 7 Rule 11 C.P.C application during trial. The defendants 1 and 4 are always at liberty in invoke order Order 1 Rule 10(2) of C.P.C if they are so advised.

22.In view of the above said deliberations, there are no merits in the revision petitions and both the civil revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

1. The Principal District Judge, Kanyakumari at Nagercoil
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(MD).Nos.2847 & 2853 of 2024
and CMP(MD).Nos.16278 of 2024 and 16289 of 2024

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