
(2011) 07 MAD CK 0064

In the Madras High Court

Case No : C.R.P. (PD) No. 412 of 2011 and M.P. No. 1 of 2011

J.V. Corporation and K.A. Chandran

APPELLANT

Vs

Grinder Care Enterprises P. Ltd.

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122
Original Side Rules — Order 2 Rule 7

Citation : (2011) 07 MAD CK 0064

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : A.A. Lawrence, for the Appellant; N.P. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The present civil revision petition is directed against the order of the learned Additional District Judge, Fast Track

Court No. I, Chennai dated 1.12.2010 made in I.A. No. 65 of 2010 in O.S. No. 6695 of 2010.

2. Defendants 1 and 2 in the said suit are the Petitioners herein and the Plaintiff thereon is the Respondent.

3. In the suit filed by the Respondent against the Petitioners for recovery of a sum of Rs. 5,00,000/-towards damages with interest and for other

reliefs, the Petitioners have filed an application in I.A. No. 65 of 2010 to dismiss the suit on the ground that an application under Order III Rule 2

CPC was not filed by the Respondent herein seeking leave of the Court to file the suit represented by Power Agent. The said application came to

be dismissed by the Court below and the present civil revision petition is directed against the said order.

4. It is the case of the Petitioners that since the Respondent firm is represented by the Power of Attorney, such leave shall be obtained. On the other hand, it is contended by the learned Counsel appearing for the Respondent that the suit has been laid at the first instance before this Court

and a leave has been sought for under Order II Rule 7 of Original Side Rules and since the matter has been transferred to the City Civil Court in view of the pecuniary jurisdiction, leave need not be obtained once again from the said Court under Order III Rule 2 Code of Civil Procedure

5. I have carefully considered the submissions made by the learned Counsel appearing for the Petitioners and the learned Counsel appearing for the Respondent.

6. It is an admitted case that the said suit was originally filed before this Court in the Original Side and later, it was transferred to the file of the City Civil Court, Chennai in view of raising of pecuniary jurisdiction thereunder. Before this Court, the Petitioners have sought leave under Order II

Rule 7 of the Rules framed by the High Court on the Original Side. The said rule is usefully extracted here under:

7. Except as provided for by the Code, if a plaint is subscribed and verified by a person other than the party on whose behalf it is presented, it shall not be admitted or filed, unless it is made to appear, upon affidavit, that such persons is a recognized agent of the party as defined by Order III Rule 2 of the Code, and is duly authorized and competent so to do.

7. Section 122 of CPC empowers the High Court to make rules. It would be useful to extract the said provision and the same is extracted here under:

122. Power of certain High Courts to make rules:-High Courts not being the Court of a Judicial Commissioner may, from time to time after

previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by

such rules annul, alter or add to all or any of the rules in the First Schedule.

Pursuant to the said provision, rules have been framed by the High Court and as stated already, Order II Rule 7 contemplates that if the plaint is

subscribed and verified by a person other than the party, it shall not be admitted or filed unless an affidavit of such person is filed. In the given case

on hand, as stated already, such application was filed before the Original Side of

this Court when the suit has been filed and leave has been granted

on 6.9.2000. In view of the above stated position, I am of the considered view that the contention raised on the side of the Petitioners that No.

leave has been obtained as required under Order III Rule 2 CPC cannot be accepted. Even otherwise, such leave is only a procedural one and

failure to do so alone cannot be a ground to dismiss the suit. That apart, the Petitioners who are Defendants in the said suit has not raised the same

in the written statement and only for the first time, it has been made by filing an interlocutory application.

8. Taking such view, I am of the considered view that the order of the Court below does not require any interference by this Court.

9. In fine, the order of the learned Additional District Judge, Fast Track Court No. I, Chennai dated 1.12.2010 made in I.A. No. 65 of 2010 in

O.S. No. 6695 of 2010 is confirmed and the civil revision petition stands dismissed. However, there is No. order as to costs. Consequently,

connected miscellaneous petition is closed.