

**(2008) 03 MAD CK 0179****Madras High Court****Case No:** C.R.P. (PD) (MD) No. 532 of 2008 and M.P. (MD) No. 1 of 2008

R. Vino @ Veincentza and A.

Davidson

APPELLANT

Vs

Maria Grace Benefit Fund Ltd.

RESPONDENT

**Date of Decision:** March 25, 2008**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 9
- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** R. Banumathi, J**Bench:** Single Bench**Advocate:** P.T.S. Narendravasan, for the Appellant;**Judgement**

@JUDGMENTTAG-ORDER

R. Banumathi, J.

This revision is directed against the order in I.A.No.364 of 2007 dismissing the petition filed under Order 8 Rule 9 CPC and declining permission to file Additional Written Statement. Defendants are the revision petitioners. Respondent/Plaintiff - Maria Grace Benefit Fund Limited has filed the suit for recovery of Rs. 5,84,000/- with subsequent interest and cost. The Petitioners/Defendants have filed their written statement on 06.09.2006. When the suit was taken up for trial and after filing of proof affidavit, Petitioners/Defendants have filed I.A.No.364 of 2007 under Order 8 Rule 9 CPC seeking to file Additional Written Statement. In the Additional Written Statement, Petitioners/ Defendants have raised the point regarding competency of Fr. Jeganivasagar to file the suit.

2. Upon consideration of submissions, the learned 1 Additional District Judge has dismissed the petition observing that proof affidavit was already filed and that petition has been filed with a view to delay the trial proceedings. The learned Trial Judge also observed that if the petition is allowed, it will cause prejudice to the

Respondent/Plaintiff.

3. Challenging the impugned order, the learned counsel for the Revision Petitioners Mr. P.T.S. Narendravasan has submitted that only at the time of filing the documents, Petitioners/Defendants came to know that plaintiff is not competent to file the suit and therefore, there was necessity to file Additional Written Statement. In support of his contention, the learned counsel for the Petitioners/Defendants has drawn the attention of this Court to Clause 96 and 100 of the Memorandum of Articles of Association of the plaintiff Benefit Fund.

4. As per Clause 96 all suits and proceedings by or against the company shall be instituted in the name of the fund represented by the Chief Executive Officer. Likewise, as per Clause 100, the Chief Executive Officer is the Principal Officer of the company and he is empowered to attend the day to day administration of the company.

5. If really the Petitioners/Defendants thought that as per Clause 96 and 100, the Managing Director is not competent to represent the plaintiff-Benefit Fund, the defendants could have very well raised the point in the written statement already filed by them. But that was not to be so.

6. By perusal of the counter filed by the Respondent/Plaintiff, it is seen that the plaintiff has made certain serious allegations against the Petitioners/Defendants. In the counter, it is alleged that the Petitioners/Defendants along with the former Chief Executive Officer Alphonce of the respondent company fraudulently swindled a sum of Rs. 26,51,600/- and on the basis of their complaint F.I.R. was also registered and since then the post of Chief Executive Officer is vacant. When F.I.R. was registered against the former Chief Executive Officer and when the post has been kept vacant, it is not open to the Petitioners/Defendants to raise objection regarding the competency of the plaintiff. Likewise, it is not open to the Petitioners/Defendants to raise objection that the Plaintiff-Benefit Fund could be represented only by the Chief Executive Officer.

7. Having regard to the averments made in the counter affidavit and the stage in which the petition was filed for receiving Additional Written Statement, the learned I Additional District Judge has rightly dismissed the petition declining to receive the Additional Written Statement. The impugned order does not suffer from any serious infirmity warranting interference exercising supervisory jurisdiction under Article 227 of Constitution of India. This revision petition has no merits and is liable to be dismissed. In the result, the order in I.A.No.364 of 2007 in O.S.No.14 of 2006 dated 31.10.2007 is confirmed and this revision is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

The learned I Additional District Judge, Madurai is directed to proceed with the suit and dispose the same in accordance with law.