

R. Vino @ Veincentza and A. Davidson Vs Maria Grace Benefit Fund Ltd.

Court: Madras High Court

Date of Decision: March 25, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 8 Rule 9
Constitution of India, 1950 â€” 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. PT.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 Alphonse 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.