

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 533 of 2015
& M.P.No.1 of 2015

P.K.Japee & Co.,
Rep. by its Partner/Authorized
Signatory - Varun Japee
Registered Office at
26, Badrian Street
Chennai-1 also at No.271
Periyar EVR High Road
Kilpauk, Chennai-10
rep. by its Power Agent
Samir M.Mehta. .. Petitioner /Complainant

Versus

T.Murugan
S/o.Thirunavukarasu
Prop.Sri Ambigai Traders
No.1/549, J.J. Nagar
Mogappair West
Chennai-37.

also at :
Sampoorna, Flat E, 1st Floor
No.68A, 4th Main Road
Nolambur
Chennai-600 037.

.. Respondents /Accused

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 06.04.2015 passed in C.M.P.No.1317 of 2015 in S.T.C.No.198 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur.

For Petitioner : Mr.B.R.Shankaralingam

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ORDER

The petitioner/complainant has come forward with this Criminal Revision Case seeking to set aside the order dated 06.04.2015 passed in C.M.P.No.1317 of 2015 in S.T.C.No.198 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur.

2. The case of the petitioner/complainant is that the respondent/accused approached the petitioner for supply of figured glass materials. The petitioner supplied figured glass materials to the accused worth Rs.63,42,599/- on 16.08.2013. The accused has paid only a sum of Rs.15,00,000/-, leaving behind a sum of

Rs.48,42,599/- unpaid for the goods supplied. After repeated demands, the accused gave a cheque bearing No.887856, dated 02.07.2014, drawn on Syndicate Bank, Mogappair West Branch, for a sum of Rs.48,42,599/-. When the complainant presented the cheque for collection, it returned dishonoured with an endorsement "Funds Insufficient" on 03.07.2014. The complainant issued a legal notice to the accused on 25.07.2014, for which, the accused has neither replied nor settled the amount and hence, the complaint under Section 138 of the Negotiable Instruments Act was filed by the petitioner/complainant. While so, when the case was posted for examination of defence witnesses, the respondent/accused has filed a petition in C.M.P.No.1317 of 2015 before the Trial Court seeking for examination of three witnesses. The said petition was allowed by the Trial Court on 06.04.2015. Aggrieved against the same, the present Criminal Revision Case is filed by the complainant.

3. Mr.B.R.Shankaralingam, learned counsel appearing for the petitioner/ complainant would submit that the proceedings of the case is summary in nature. He would further submit that when the case was posted for examination of defence witnesses, the respondent/accused has filed a petition seeking to examine three witnesses as defence witnesses to prove his case and to rebut the presumption, without giving any reason in the petition seeking for examination of the witnesses. He would further add that the accused has to first enter into witness box, then only the question of examining third party as defence witness will arise. He would further point out that the petition has been filed before the Trial Court belatedly only to drag on the proceedings, but, the Trial Court without taking into consideration of the said fact has allowed the petition and hence, he prayed for allowing the Criminal Revision Case and setting aside the order of the Trial Court.

4. Heard the learned counsel appearing for the petitioner. By consent, the Criminal Revision Case itself is taken up for final disposal at the stage of admission itself.

5. On a careful perusal of the petition filed seeking to examine three witnesses as defence witnesses, it is seen that the accused has given the list of witnesses. First of all, the accused seeks to examine the Manager, Syndicate Bank, Mogappair West Branch, as a necessary and proper party, for which, the petitioner/complainant cannot have any objection. Insofar as the accused seeking to examine other two witnesses, viz., Mukesh Mehta and Vijaya, though, the complainant has objected to the same stating that the accused has filed the petition before the Trial Court without giving any reason in the petition, in my considered opinion, the case is filed under Section 138 of Negotiable Instruments Act and therefore, the burden is naturally on the accused to prove his case and to rebut the presumption and hence, adequate opportunity has to be given to the accused and therefore, naturally, the accused should be permitted to examine these two witnesses also and hence, the Trial Court was right in allowing the petition. Hence, I do not find any reason to interfere with the order dated 06.04.2015 passed by the Trial Court in C.M.P.No.1317 of 2015. It is suffice to state that the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Ambattur, shall expedite the trial of the case in S.T.C.No.198 of

2014 and dispose of the same, on merits and in accordance with law, as expeditiously as possible. The respondent/accused is directed not to drag on the proceedings and to co-operate with the trial of the case.

6. This Criminal Revision Case is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

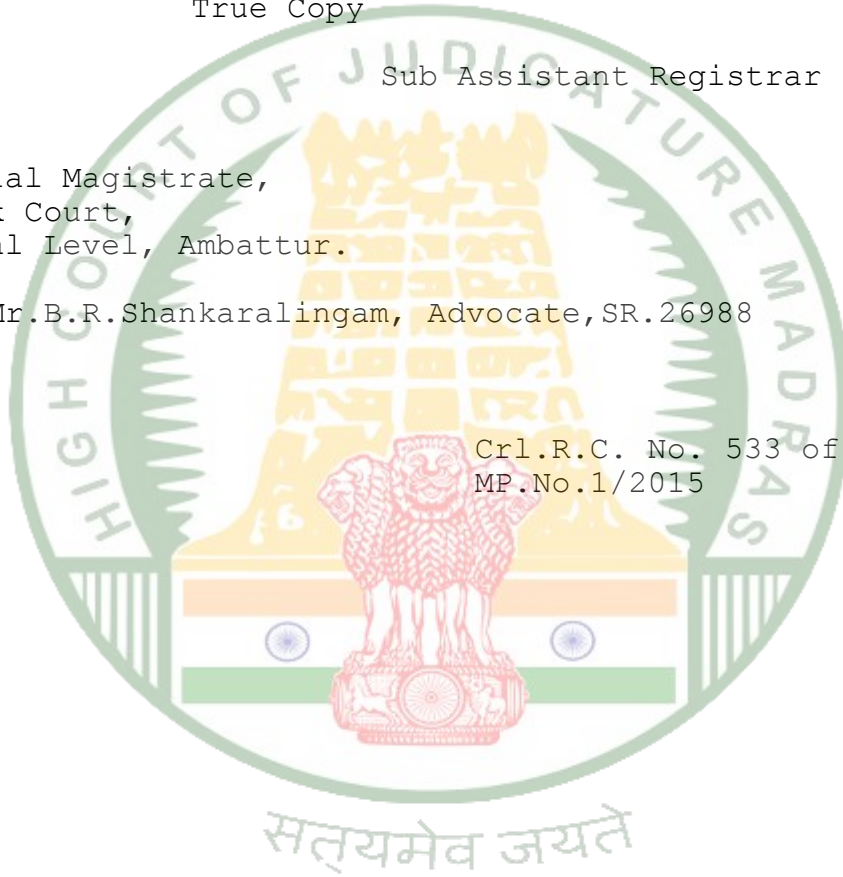
To

The Judicial Magistrate,
Fast Track Court,
Magisterial Level, Ambattur.

+1 cc to Mr.B.R.Shankaralingam, Advocate,SR.26988

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MP.No.1/2015



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