

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

CRP (NPD) No.1516 of 2015
and M.P.No.1 of 2015

Ratna Stores Pvt. Ltd.,
79, Usman Road
T.Nagar, Chennai 600 017

.. Petitioner

versus

K.Chandrasekar
Proprietor
Bhagyam Wet Grinders
presently carrying on business at
72-C, Dr.Ambedkar Road
Velandipalayam (PO)
Coimbatore 641 025

..Respondent

Petition filed under Article 227 of the Constitution of India against the order and decree dated 30.01.2015 made in I.A.No.17238 of 2014 in O.S.No.5086 of 2014 on the file of the II Assistant City Civil Court, Chennai.

For Petitioner	: Mr.Kumar
For Respondent	: Mr.L.Dhamodaran (Caveator)

ORDER

Challenging the fair and final order passed in I.A.No.17238 of 2014 in O.S.No.5086 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed the suit in O.S.No.5086 of 2014 under Order XXXVII Rule 2 of Code of Civil Procedure for recovery of a sum of Rs.8,62,605/- with interest @ 24% p.a. on Rs.5,04,020/- from the date of plaint till the date of realisation.

3.1 The petitioner/defendant filed an application in I.A.No.17238 of 2013 to grant leave to defend the suit. In the affidavit filed in support of the application, the petitioner/defendant has stated that the transactions of the case is a continuous transaction between the parties and the respondent/plaintiff has not produced any statement of accounts except the invoice bill. Further, they have stated that there were no averments as to what are all the goods which were supplied to them and the payments received by them, except in one paragraph stating that the last payment was made in the year 2011. That apart, the petitioner/defendant disputed the claim of the respondent/plaintiff, which was claimed on several occasions. They have also stated that the respondent/plaintiff has not responded properly. In paragraph No.8 of the affidavit, the petitioner/defendant disputed the quality of the goods supplied by the respondent/plaintiff.

3.2. The said application was contested by the respondent/plaintiff by stating that the averments stated in the affidavit are vague and therefore, the application is liable to be rejected. Further, the respondent/plaintiff has stated that the petitioner/defendant has not

disputed the claim made by the respondent/plaintiff in the affidavit.

3.3. The trial Court, after taking into consideration the case of both parties, dismissed the application stating that the petitioner/defendant has not disputed the factum of supply of goods; had not replied to the notice given by the respondent/plaintiff and also admitted the part payment made by them, however, failed to produce any document to establish that they are not liable to pay the suit amount.

3.4. Aggrieved over the dismissal of the application, the petitioner/defendant has filed the above Civil Revision Petition,

4.1 The learned counsel appearing for the petitioner submitted that the petitioner/defendant had disputed the claim made by the respondent/plaintiff in the affidavit filed in support of the application and that there are triable issues in the suit and therefore, the trial Court ought to have allowed the application filed by the petitioner/defendant and permitted them to defend the suit in O.S.No.5086 of 2014.

4.2 In support of the above contentions, the learned counsel for the petitioner/defendant has relied upon the Judgment of this Court reported in **CDJ 2013 MHC 4394** in the case of **Vidyasagar Proprietor Winstar Shipping Services vs. M/s Evererst India Pvt. Ltd., and another**, wherein this Court has held that in the absence of any triable issues

involved in the suit, the suit filed by the plaintiff under Order XXXVII Rule 1 of Code of Civil Procedure is maintainable.

5. Countering the submissions made by the learned counsel for the petitioner, Mr. L. Dhamodharan, learned counsel for the respondent submitted that since there is no triable issue involved in the suit, the order passed by the trial Court is justified and proper. In support of his contention, the learned counsel has relied upon the following Judgments:

(i) **V.K.K. Nair vs. D. Shitta Kumar reported in 2004 (5) CTC 734**, wherein this Court held that unless the defendant projects triable issues in money suits and seeks summons for leave to defend, the trial Court need not grant leave.

(ii) **M/s National Agency vs. K. Nanda Gopal Chetty reported in (2004) 2 MLJ 391**. In this Judgment, this Court has observed that as per Order 37 Rule 1 of Code of Civil Procedure, on an enactment, where the sum sought to be recovered is fixed sum of money or in the nature of debt other than a penalty, the suit could be filed.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could

be seen that the petitioner/defendant has disputed the case of the respondent/plaintiff in the affidavit filed in support of the said application. In fact, in paragraph Nos.4, 7 and 8 of the application, the petitioner/defendant had categorically disputed the claim made by the respondent/plaintiff. On a perusal of the same, it is clear that the petitioner/defendant has raised triable issues involved in the suit. The claim made by the respondent/plaintiff can be proved only by the oral and documentary evidences. The grounds on which the trial Court dismissed the application stating that the petitioner/defendant had not disputed the factum of supply of goods and that they have not replied to the notice sent by the respondent/plaintiff are not the grounds to reject the application filed by the petitioner/defendant. The finding of the trial Court is erroneous and the same cannot be sustained.

8. Though there is no dispute with regard to the judgments relied upon by the learned counsel on either side, since the facts and circumstances of the case differs from the judgments relied upon by the learned counsel for the respondent/plaintiff, the same are not taken into consideration.

9. In these circumstances, the fair and final order passed by the trial Court dated 30.01.2015 in I.A.No.17238 of 2014 in O.S.No.5086 of 2014 are set aside and the unconditional leave is granted to the petitioner/defendant to defend the suit.

10.The learned counsel appearing on either side submitted that a direction may be given to the trial Court to dispose of the suit within a stipulated time.

11. In view of the submission made by the learned counsel on either side, the petitioner/defendant shall file the written statement on or before **30.06.2015** and the trial Court shall dispose of the suit on merits and in accordance with law, within a period of six months thereafter.

12.The petitioner/defendant is also directed to deposit the suit claim amount to the credit of O.S.No.5086 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, **on or before 10.06.2015**. On such deposit being made by the petitioner/defendant, the II Assistant Judge, City Civil Court, Chennai is directed to deposit the said amount in the Indian Bank, Madras High Court Branch, in a fixed deposit scheme, initially for a period of one year.

With these observations, the Civil Revision Petition is disposed of. No costs. Connected miscellaneous petition is closed.

10.04.2015

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Note: Issue on 13.04.2015
To

The II Assistant City Civil Court, Chennai.

M.DURAISWAMY,J

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