

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 - 04 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (NPD) No. 1562 of 2015

and

M.P. No. 1 of 2015

1. S. Dhanaraj
2. S. Punithavel
3. S. Varadaraj .. Petitioners/ Defendants

Vs.

KAFF Appliances (India) Pvt. Ltd.
Rep. by its Managing Director
Mr. Deepak Anand
No. 229 First Floor, Royal Park
K.H. Road
Ayanavaram
Chennai

.. Respondent/ Plaintiff

PRAYER: Petition filed under Section 115 CPC against the fair and decretal order dated 09.01.2015 passed in I.A. No. 16328 of 2014 in O.S. No. 4689 of 2014 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioners : Mr. G. Ethirajulu

For Respondent : Mr. Mohammed Fayaz Ali

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ORDER

Challenging the order dated 09.01.2015 passed by the XI Assistant Judge, City Civil Court, Chennai in I.A. No. 16328 of 2014 in O.S. No. 4689 of 2014 wherein and by which the application filed by the petitioners herein seeking to grant leave to defend the suit was dismissed, the present Civil Revision Petition has been filed.

2. The petitioners herein filed I.A. No. 16328 of 2014 before the City Civil Court, Chennai, seeking permission to defend the suit filed by the respondent herein for the relief of recovery of a sum of Rs.6,43,663/- along with 18% interest per annum.

3. From the materials available on record, it is seen that the respondent Company, which is carrying on business in kitchen appliances, entered into a rental agreement with the petitioners herein on 01.12.2012 on a monthly rent Rs.77,000/- in respect of the premises bearing Door No. 57, Madura Mattupalayam Reddy Street, MGR Nagar, Madhavaram, Chennai, for warehousing purposes. During August 2013, the respondent Company informed the petitioners herein about their intention to vacate the premises and requested for refund of security deposit after adjusting the rents for the months of September to November and vacated the premises on 30.11.2013. Since the petitioners herein refused to take possession of the property and did not come forward to refund the security deposit, the respondent Company issued legal notice dated 01.4.2014. Since all their efforts went in vain, they filed the suit under Order XXXVII Rules 1 and 2 CPC under a summary procedure, for recovery of a sum of Rs.6,43,663/- together with interest at the rate of 18% per annum.

4. According to the petitioners herein, who claim to be the owners of the building in which the respondent company is carrying on business in kitchen appliances, the respondent committed willful default in payment of rent for the premises from September 2013 and that since the rent was not paid, there were exchange of correspondence between them. While so, the respondent sent a legal notice on 13.01.2014 demanding the refund of security deposit with interest at the rate of 18% p.a.. Hence, the petitioners filed R.C.O.P. Nos. 15 of 2014, 16 of 2014 and 17 of 2015. According to the petitioners, the respondent is liable to pay a sum of Rs. 6,09,465/- towards arrears of rent, TDS and Service Tax after deducting security deposit. As the petitioners had triable issues, they filed petition in I.A. No. 16328 of 2014 seeking leave to defend the suit in O.S. No. 4689 of 2014.

5. Denying all the allegations, the respondent / plaintiff contended before the trial Court that they vacated the premises on 30.11.2013 after informing the petitioners as early as in August 2013. The main allegation of the respondents before the trial Court is that though they had returned the keys to the petitioners through their counsel on 06.5.2014, inspite of several demands, they refused to refund the security deposit and hence, they filed the

suit for recovery of money due from the hands of the petitioners herein.

6. Before the trial Court, though no witness was examined, both the parties marked documents, viz., Exs. P.1 to P.11 and Exs. R.1 to R.8 in support of their respective claims.

7. The Trial Court, on consideration of the materials and after hearing both the parties, dismissed the application. Feeling aggrieved, the petitioners have come before this Court.

8. Heard the learned counsel appearing for either parties and perused the records.

9. The only point that has to be decided in this revision petition is as to whether the application filed by the defendants, prima facie, discloses a triable issue or not.

10. The main contention of the learned counsel for the petitioners is that though the respondent / plaintiff had agreed to pay the rent for the premises upto 20.05.2013 as per Ex. P.3, the same was not paid by them. It is his specific contention that when the petitioners have specifically admitted that the lease can be terminated by issuing 3 months notice in advance to the landlords, the same was not followed by the respondent / plaintiff thereby violating the terms of agreement. Learned counsel also contended that the the petitioners have made out a case before the Court below for granting leave to defend the suit under Order 37 Rule 3(5) CPC. He further submitted that the averments made in the affidavit filed in support of the application, if considered in a proper and perspective manner, would certainly reveal that there are triable issues for the Court below to decide, by conducting a regular trial of the suit. He further submitted that the Court below has not assigned any valid and justifiable reasons for rejecting the application except by saying that there are no triable issues arising out of the petition. According to the learned counsel, the trial Court had not considered the various documents filed by petitioners and dismissed the application in a cryptic manner. He also contended that the Civil Revision Petition filed against the order rejecting the application filed under Order 37 Rule 3(5) CPC is maintainable.

11. Per contra, the learned counsel appearing for the respondent submitted that the suit claim was based on a rental agreement as admitted by the petitioners and, therefore, the suit filed under Order 37 Rule 1 CPC as a summary suit, is maintainable and consequently, the petitioners are not entitled to seek the relief of leave of the Court to defend the suit. He also submitted that there are no triable issues in view of the fact that the petitioners have to pay the suit claim as per the rental agreement admittedly entered into between the parties. In any event, the learned counsel appearing for the respondent submitted that in case this Court is of the view that the application is to be allowed, then the petitioners may be directed to deposit 50% of the suit claim and also by fixing a time frame for the Court below to dispose of the suit.

12. Defending a suit is a valuable right available to a defendant, which cannot be denied or brushed aside in a casual manner. That is why the very language of Order 37 Rule 3 (5) CPC only contemplates that the defendant "may disclose such facts as may be deemed sufficient entitle him to defend". Therefore, whether the facts are true in nature and based on those facts whether the defendant is entitled to succeed in the suit is purely a matter for trial, which could be possibly gone into only when the defendant is granted leave to defend such suit. Therefore, the application filed under Order 37 Rule 3(5) seeking for grant of leave, should be considered by the courts only by keeping it in mind that a defence, which is a valuable right, cannot be taken away in a lighter and casual approach, simply because the suit is filed under Order 37 Rule 1 CPC. This principle has already been reiterated by this Court in *G. Rajarajan vs. AIG Consumer Financial Services (India) Ltd.* [2012 - 4 - L.W. 155].

13. Insofar as the present case is concerned, from a perusal of the records, it is evident that the petitioners have put forth some materials and details in the affidavit indicating that there are triable issues existing between the parties. The court below failed to note the averments made in Exhibits and the averments made in the affidavit filed by the revision petitioners. It is further seen that the plaintiff also has replied to the notices issued by the revision petitioners / defendants. Therefore, it is clear that both sides have raised some issues which have to be necessarily gone into by conducting a regular trial, which can be proceeded only after permitting the petitioners to defend the suit. Learned counsel for the plaintiff, who filed caveat, is also present before this Court.

14. Further, a mere perusal of affidavit filed by the petitioners in support of the application discloses that each and every allegation made in the plaint is denied. On the other hand, the defendants had made only a counter claim claiming arrears of rent from the plaintiff. It is also clear from the facts that the petitioners / defendants had filed rent control proceedings.

15. From the impugned order, there is no indication as to whether the suit was decreed immediately consequent upon the dismissal of the said application and Order 37 Rule 3(5) CPC. However, even if a decree has been passed, once the leave is granted, the same shall not stand automatically set aside and it is open to the defendants to approach the trial court under Order 37 Rule (4) CPC to reopen the decree in the event of revision being allowed. Therefore, if any consequential decree is passed in this case by the Court below, the petitioners are at liberty to make an application under Order 37 Rule 4 CPC before the trial Court seeking for setting aside the decree in view of the order passed in this Civil Revision Petition.

16. Though the learned counsel for the respondent insisted that the petitioners may be directed to deposit 50% of the claim made in the suit, in view of the disputed facts between the parties, I am not inclined to pass any such order.

With these observations, the Civil Revision Petition is allowed and the order passed by the Court below is set aside. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

gri

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To

XI Assistant judge

City Civil Court

Chennai-104

1 cc to Mr. Mohamed Fayaz, Advocate, Sr. 24840

1 cc to M/s. G. Ethirajulu, Advocate, Sr. 24108

C.R.P. (NPD) No. 1562 of 2015

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