

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3420 of 2015
and M.P.No.1 of 2015

M/S.Goodsun Industries (P) Limited Company
Company office at SF No.206, Perks Campus
Trichy Road, Coimbatore.

Rep. by its M.D. R.Jagannathan

.. Petitioner/Defendant

Vs.

Coimbatore Tube Company Rep. by
its Managing Partner
Hussain Hasim
No.290, Dr.Nanjappa Rood
Coimbatore-18.

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.03.2015 in I.A.No.351 of 2014 in O.S.No.1403 of 2013 on the file of the III Additional Sub-Court, Coimbatore.

For Petitioner : Mr.P.Valliappan
(earlier counsel Ms.R.Poornima, change of
vakalt filed on 07.12.2015 by Mr.P.Valliappan)

For Respondent : Mr.C.R.Prasanan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 03.03.2015 in I.A.No.351 of 2014 in O.S.No.1403 of 2013 on the file of the III Additional Sub-Court, Coimbatore.

2.The respondent herein as a plaintiff filed a suit in O.S.No.1403 of 2013 for recovery of money due on business transaction. During pendency of the same, the defendant/revision petitioner herein has filed an application in I.A.No.351 of 2014 under Order 7 Rule 11(a) and (d) of C.P.C. for rejection of plaint stating that last transaction has been made on 10.03.2010 by way of cheque for Rs.25,000/-, but the suit has been filed after three years and hence, the suit is barred by time. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the defendant.

3.Learned counsel for the revision petitioner/defendant submits that prima facie on the face of the record shows that the suit is barred by law, because last transaction was made on 10.03.2010 and outstanding was on 01.04.2009 as per para-6 of

the plaint, but the suit has been filed only on 08.03.2013. He further submits that the plaintiff has not produced any documents to show that the payment was made on 10.03.2010 for Rs.25,000/-. That factum was not considered by the trial Court. Hence, he prayed for allowing the revision.

4.Resisting the same, learned counsel for the respondent/plaintiff submits that the suit is for recovery of money due on business transaction. On 01.04.2009, outstanding was Rs.3,28,838/- and subsequently, the revision petitioner/defendant paid payment to the plaintiff by way of cheque on various dates. The last transaction was made on 10.03.2010, wherein the defendant had paid a sum of Rs.25,000/- by way of cheque and the balance amount is Rs.1,61,962/-. So the respondent/plaintiff filed the suit within three years from the date from 10.03.2010, which is well within time. He further submits that question of limitation is mixed question of law and fact. The trial Court in para-7 of its order rightly considered the same. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.The respondent herein as a plaintiff filed a suit for the following reliefs:

“a. directing the defendant to pay a sum of Rs.1,61,962/- along with interest at the rate of 18% per annum from the date of filing till the date of realization of the amount claimed by the plaintiff;

b. directing the defendant to pay the cost of the suit;”

7.In the plaint, it was stated that on 01.04.1999, the outstanding was Rs.3,28,838/- and subsequently on various dates, the defendant has made payment by way of cheque. The last transaction was made on 10.03.2010 and the defendant has to pay the balance sum of Rs.1,61,962/-. Therefore, the plaintiff has filed the suit for the aforesaid reliefs.

8.It is true, even though in the cause of action paragraph, the plaintiff stated that a sum of Rs.25,000/- has been paid by the defendant on 10.03.2010, he has not filed any document to prove the same and it is to be noted that no bank statement has been filed. It is well settled dictum of the Honourable Apex Court that in the suit for recovery of money, statement of current and running

account is necessary to prove as to when the last payment was made. In the cause of action paragraph, it was specifically mentioned that Rs.25,000/- has been paid by the defendant by way of cheque and the same has to be proved by the plaintiff at the time of trial. So the trial Court after considering the above aspects in proper perspective, rightly dismissed the application filed by the defendant. Therefore, the impugned order passed by the trial Court does not warrant any interference and it is hereby confirmed. The revision deserves to be dismissed and it is hereby dismissed.

9. In fine, the Civil Revision Petition stands dismissed. The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order, after giving opportunity to the defendant for filing the written statement within the time stipulated in Civil Procedure Code. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2016

Index: Yes/No

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To

The III Additional Sub-Court, Coimbatore.

R.MALA,J.

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