

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.4351 of 2015
and
M.P.No.1 of 2015

M/s.Hint Transformer Private Limited,
having its Transformer Projects Office at
2/105, Block No.3, F2 Gem Park,
KSS Nagar,
Keelampakkam, Kanchipuram - 603 103.
and
having registered Office at
B-13, Road No.7, IDA Kukatpally,
Gandhi Nagar, Hyderabad - 500 037.
Andhra Pradesh.

... Petitioner

vs

AT Electric Supplys
represented by its Manager,
Mr.Deepak Kanuga
No.23/9, Salai Street,
Vepery, Chennai - 600 007.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India
against the order of learned XVI Additional Judge, City Civil Court, Chennai,
passed in I.A.No.52 of 2015 in O.S.No.3197 of 2014 on 01.08.2015.

For Petitioner : Mr.T.D.Selvan Babu
For Respondent : Mr.N.K.Kabir, senior counsel
for Mrs.Vijayalakshmi Rajarathinam

ORDER

This revision arises against the order of learned XVI Additional Judge, City Civil Court, Chennai, passed in I.A.No.52 of 2015 in O.S.No.3197 of 2014 on 01.08.2015.

2. Respondent/plaintiff filed a summary suit in O.S.No.3197 of 2014 on the file of learned XVI Additional Judge, City Civil Court, Chennai, under Or.37 R.2 CPC towards recovery of a sum of Rs.11,90,576/-. Therein, petitioner/defendant sought leave to defend. Under order in I.A.No.52 of 2015 dated 01.08.2015, the Court below granted such relief subject to the condition that the petitioner deposits a sum of Rs.5,00,000/- to the credit of suit on or before 24.08.2015 and informed that in the event of failure to do so, the interlocutory application shall stand dismissed. Aggrieved by such order, petitioner has preferred the present revision.

3. Heard learned counsel for petitioner and learned senior counsel for respondent.

4. Learned counsel for petitioner submits that the petitioner/defendant in support of leave to defend application had contended that the respondent/plaintiff cannot sue on behalf of a third party based on a purchase order dated 11.03.2011 purportedly placed by petitioner/defendant on such party and in the absence of any agreement between the plaintiff and defendant for supply of goods and non-production of invoices giving rise to the cause of action, the plaint itself is liable to be rejected. The Court below has found that the petitioner/defendant had raised defences regarding the maintainability of the suit, questioning the competence of the person who signed the plaint, since he held no Power of Attorney, that no cause of action was informed and that the suit was filed without territorial jurisdiction. It is contended that the Court below fell into error in informing that the liability of the defendant has not been disputed and hence, the scope of defence was confined to question of law and not question of fact and in ordering deposit of sum of Rs.5,00,000/- to the credit of summary suit in O.S.No.3197 of 2014.

5. Learned counsel for petitioner referred to the decision in ***G.Rajarajan v. AIG Consumer Financial Services (India) Ltd. [2012 (5) CTC 313]*** to submit that all that the defendant was required to do was to disclose

some facts, the establishment thereof was not essential at such stage and valuable right to defend could not be taken away by Courts in a causal manner. Learned counsel referred to the decision of the Apex Court in ***M/s.Mechalec Engineers & Manufacturers v. M/s.Basic Equipment Corporation [AIR 1977 SC 577]*** wherein the following principles stand laid down:

“8. In Sm.Kiranmoyee Dassi v. Dr.J.Chatterjee, (1945) 49 Cal WN 246 at p.253, Das, J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 37, C.P.C. in the form of the following propositions (at p.253):

“(a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to

establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby shew mercy to the defendant by enabling him to try to prove a defence."

6. Learned senior counsel for respondent/plaintiff referred to a communication of petitioner/defendant to the respondent/plaintiff dated 21.01.2014 and e-mail of date 08.10.2012 towards informing that the petitioner/defendant had thereunder admitted its liability. Learned senior counsel also referred to the plaint to inform that the petitioner/defendant had issued two cheques in sums of Rs.5,95,000/- and Rs.5,95,576/- one of which

had been returned unpaid, the deposit of the other was refrained from at the instance of petitioner/defendant who subsequently issued a cheque bearing No.363541 dated 02.09.2011 for Rs.5,95,000/-. Learned senior counsel also would bring to notice that as a consequence of the conditional order not having been complied with, the suit has been decreed on 30.10.2015.

7. This Court has considered the rival submissions.

8. The Court below is not right in informing that only question of maintainability had been raised by petitioner/defendant and that it had not disputed its liability. Questions on lack of privity of contract as also non-liability to the respondent/plaintiff have been raised. At the same time, the fact that cheques stand issued by petitioner/defendant in favour of respondent/plaintiff and communications pleading time for payment have been addressed cannot be ignored. The rival interests are to be balanced. This Court is of the view that such end can be achieved by passing the following order:

(i) In the particular circumstances of the case, the petitioner may now move an application under Or.37 R.4 CPC seeking setting aside of the decree

passed in the suit.

(ii) This Court records the submission of learned senior counsel for respondent that the respondent will have no objection to such application being allowed.

(iii) Petitioner/defendant shall now be required to deposit a sum of Rs.5,00,000/- to the credit of O.S.No.3197 of 2014 on the file of learned XVI Additional Judge, City Civil Court, Chennai, within a period of four weeks from the date of setting aside of the decree. Upon its doing so, petitioner/defendant shall be permitted to raise defences in the action. Upon failure to effect deposit as stipulated above, Court below may pass a decree in favour of the respondent/plaintiff forthwith.

Any observations made herein above are only towards effective disposal of the present revision and shall have no bearing on the rival contentions or merits thereof.

The Civil Revision Petition, accordingly, is ordered. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2016

Index:yes/no
Internet:yes
gm

To
The XVI Additional Judge,
City Civil Court,
Chennai.

C.T.SELVAM, J

gm

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