

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.517 of 2016

&

C.M.P.No.2629 of 2016

M/s.Globe Agencies

Rep. By its Prop. Mr.Maria Manickam

No.2845, LIG-II, TNEB

Ayyapakkam

Chennai – 600 077

... Petitioner

vs.

M/s.Kamachi Sponge & Power Corporation Ltd.,

Rep. By its Marketing Executive

Mr.K.Umapathy

No.39, ABC Trade Centre, III Floor

Inside Devi Theatre Complex

Anna Salai

Chennai – 600 002

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.01.2016, passed in I.A.No.162 of 2015 in O.S.No.4613 of 2015 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : M/s.P.Arthi

ORDER

The defendant in the original suit filed under Order XXXVII Rule 2 CPC is the petitioner in the present Civil Revision Petition. The suit came to be filed for recovery of the unpaid value for the goods supplied to the petitioner

herein based on three invoices and two dishonoured cheques.

2. The defendant, who entered appearance, filed a petition I.A.No.162 of 2015 in O.S.No.4613 of 2015 on the file of the trial Court under Order XVII Rule 4 seeking leave of the Court to defend the suit. The learned trial Judge, after hearing both sides, chose to allow the said application by the impugned order dated 22.01.2016 granting leave to the petitioner herein/defendant in the original suit on condition that the petitioner should deposit the amount covered by one of the dishonoured cheques, the issuance of which had not been disputed. As against the said order of the learned trial Judge, the present Civil Revision Petition has been preferred under Article 227 of the Constitution of India.

3. The submissions made by Ms.P.Arthi, learned counsel for the petitioner are heard. The grounds of revision, copy of the impugned order and copies of other documents produced in the form of typed-set of papers are also perused.

4. It is the contention of the learned counsel for the petitioner that the suit, as filed under Order XXXVII Rule 2 CPC, is not maintainable and that hence, the petitioner ought to have been granted unconditional leave to defend. If at all the petitioner is of the view that the suit as framed is not maintainable and the receipt of the plaint under Order XXXVII Rule 2 CPC is

improper, the petitioner could have either sought the rejection of the plaint or approached the High Court for striking off the plaint or for returning the plaint to be presented under proper provision. Even on merits, the above said contention of the learned counsel for the petitioner is not tenable. Admittedly, goods were supplied based on the orders placed by the revision petitioner. At the time of supply of the goods, invoices were raised and the invoices and the goods were accepted by the petitioner herein according to the plaint averments. In addition, major part of the amount recovered by the invoices were sought to be paid by two cheques and both the cheques were dishonoured when presented for collection. The said documents, according to the plaint averments, would constitute a written contract and that therefore, the suit was filed under Order 37 Rule 2 CPC.

5. Learned counsel for the petitioner submits that one of the cheques relied on by the respondent/plaintiff was no doubt issued by the petitioner/defendant, but it was not issued towards the payment of the goods supplied and it was given to the respondent/plaintiff as security to the respondent/plaintiff for continued business dealings. So far as the other cheque is concerned, it is the contention of the learned counsel for the petitioner that the petitioner/defendant has nothing to do with the same. Having admitted that one of the cheques relied on by the respondent/plaintiff was issued by the petitioner herein/defendant, which according to the petitioner was given as security, but, according to the respondent was given

towards payment of the cost of the goods supplied, the petitioner has not produced any document to show that the cost of the goods supplied was paid in any other way.

6. In an application filed under Order XXXVII Rule 4 CPC, the Court cannot render a definite finding as to whether the plaintiff's case can be sustained or not? and whether the defendant's plea of defence can be sustained or not? The only consideration to be made by the Court dealing with such application is to find out whether there is any scope for granting leave to defend and in case, such leave can be granted, whether it should be granted with condition or without condition? In the case on hand, the learned trial Judge, with a clear vision and on proper analysis of the pleadings made in the plaint as well as the affidavit filed in support of the petition seeking leave to defend, came to the conclusion that the petitioner can be granted leave to defend the suit, provided the petitioner deposits the amount covered by the cheque admittedly issued by the petitioner.

7. This Court does not find any defect or error, much less impropriety in the exercise of jurisdiction by the trial Court warranting interference by this Court using its power of superintendence under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission.

Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

22.02.2016

Index: Yes/No
Internet: yes
gpa

To

XVII Additional City Civil Court
Chennai

P.R.SHIVAKUMAR.J.,

gpa

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