

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(PD).No.869 of 2017
and C.M.P.No.4264 of 2017

M/s K&K Contech Engineering Pvt Ltd
3203, I Floor, UK Towers,
Mount Poonamallee Road
Kattupakkam, Chennai 600 056
rep by its Assistant Manager
Mr.A.Delhi Babu
S/o R.Ashokan

... Petitioner

Vs.

M/s Ganesh Electricals
No.1, New Street
Sakthi Nagar, Porur, Chennai 600 116
rep by its
Authorised Signatory Mr.B.Kumaresan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order dated 12.01.2017 in I.A.No.2/2017 in O.S.No.145/2016 passed by the Hon'ble II Additional District Court, i/c III Additional District Court, Poonamallee.

For Petitioner : Mr.A.Thirumaran
For Respondent : Mr.S.Ganesh

ORDER

Challenging the order passed in I.A.No.2 of 2017 in O.S.No.145 of 2016 on the file of the II Additional District Court, Ponnammallee, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.145 of 2016 under Order 37 C.P.C. The contention of the defendant was that they were not served with the plaint documents along with the notice, which is a mandatory provision under Order 37 C.P.C. Since the plaintiff has not enclosed the plaint documents along with the copy of the plaint to the defendant, the defendant took out an application in I.A.No.2 of 2017 to try the suit as a regular suit. After contest, the trial Court allowed the application. Challenging this order, the plaintiff has filed the above Civil Revision Petition.

3. The learned counsel appearing for the respondent/defendant, in support of his contention, relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2008) 2 MLJ 1065 (SC) [Neebha Kapoor v. Jayantilal Khandwala and others]** wherein, the Apex Court held that when

the plaintiff was not in a position to produce the original documents, a

decree in a summary suit has to be granted, provided it fulfills all the criteria laid down therein. What is mandatory is the entering of appearance by the defendant in the suit.

4. In the case on hand, the plaintiff took out the summons under Order 37 Rule 3 C.P.C. and the same was also served on the defendant. However, the original documents were not furnished to the defendant. Hence, the Apex Court held that the non compliance of the mandatory provision under Order 37 of the Code dis-entitle the plaintiff to prosecute the suit under Order 37 and the suit can be tried only as a regular suit.

5. The ratio laid down by the Supreme Court squarely applies to the facts and circumstances of this case. Admittedly, the plaintiff has not furnished the documents along with the summons sent to the defendant. Therefore, applying the principles laid down by the Apex Court in **(2008) 2 MLJ 1065 (SC) [cited supra]**, I do not find any reason to interfere with the order passed by the trial Court in I.A.No.2 of 2017.

The Civil Revision Petition is devoid of merits and the same is

dismissed. The trial Court is directed to dispose of the suit on merits and in

M.DURAIWAMY,J.

gms

accordance with law as expeditiously as possible. No costs. Consequently,
connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes

21.03.2017

gms

To

The II Additional District Court, Poonamallee.

<http://www.judis.nic.in>