

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3684 of 2012
and
M.P.No.1 of 2012**

Vincent Ashokan

.. Petitioner

Vs.

Uniq Interiors & Designs Pvt. Ltd.,
Rep. by its Manager / Authorised Signatory
Mr.Ram Seshan
New No.59, (Old No.28), K.B.Dasan Road,
Teynampet, Chennai 600 016.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order in I.A.No.8534 of 2012 in O.S.No.1038 of 2012, dated 19.07.2012, on the file of the learned IInd Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Guberan

for M/s.Rank Associates

For Respondent : Mr.S.Thankasivan

ORDER

The defendant in O.S.No.1038 of 2012, on the file of the IInd Assistant Judge, City Civil Court, Chennai, is the revision petitioner before this Court. Challenging the order passed in I.A.No.8534 of 2012 in O.S.No.1038 of 2012, dated 19.07.2012.

2.The suit in O.S.No.1038 of 2012 has been filed by the respondent/plaintiff for recovery of amount of Rs.4,61,914/-, together with the interest at the rate of 24% per annum on the Principal amount of Rs.4,52,857/- from the date of plaint till the date of payment of the said sum.

3.The case of the plaintiff is that the plaintiff is carrying on the trade of Furniture, Interior Design, Fashion-accessories, etc. The defendant in the suit and his wife were well known to the plaintiff Company Director M/s.Sona Heiden and in view of the said acquaintance, the Defendant offered to give his property at No.12, Old No.24, Ground Floor, 2nd Cross Street, Trustpuram, Chennai-24 to the plaintiff Company on lease and in the month of March 2011, the defendant had executed a Lease Deed dated 01.03.2011 in favour of the plaintiff company and granted a lease of all that ground floor

measuring to an extent of 2300 sq. ft. in New Door No.12, Old No.24, 2nd Cross Street, Trustpuram, Kodambakkam, Chennai-24 for a period of 11 months.

4.The plaintiff further states that the defendant also agreed to let out the premises for a monthly rent of Rs.75,000/- exclusive of maintenance charges of Rs.5,000/-, electricity, water consumption charges payable separately by the plaintiff that the said lease deed, the defendant received a sum of Rs.7,50,000/- as a security deposit/ rental advance under a Cheque bearing No.483987 dated 20.07.2010 drawn on Standard Chartered Bank, T.Nagar Branch, Chennai-600 017. Though the plaintiff has run the company could not able to continue his business in the premises beyond 30.09.2011. Therefore, during the month of June 2011 itself, the plaintiff company informed the defendant in respect of their intention to vacate the premises during September 2011 and accordingly they vacated the said premises on 30.09.2011. Both the plaintiff and the defendant were agreed that the monthly rent and maintenance charges from the month of June 2011 to September 2011 shall be adjusted from the rental advance available with the defendant. After adjusting the monthly rental, Tax Deductable at Source on the monthly rental and

maintenance charges, the defendant became due and liable to pay a sum of Rs.4,52,857/- to the plaintiff. Therefore, the plaintiff has sent a statement of account to the defendant during October 2011 along with a request to return the said balance amount has been due. But, there was no response from the defendant and hence, the plaintiff has called upon the defendant to pay the said sum amount by sending the details of the amount payable by way of e-mail dated 26.10.2011. On receipt of the same, the defendant has sent a reply mail dated 28.10.2011 giving a very vague reply. Therefore, on 29.10.2011, the plaintiff's Director sent an E-mail calling upon the defendant with a request not to dodge the issue and making payment of Rs.4,52,857/- honestly, but, subsequently, there was no response from the defendant. Therefore, the plaintiff has filed the above suit for recovery of amount of Rs.4,61,914/- in which Rs.4,52,857/- towards principal and Rs.9,057/- towards interest from October 2011 to January 2012 together with further interest at the rate of 24% per annum, on the Principal amount of Rs.4,52,857/- from the date of plaint till the date of payment of the said amount. The said suit has been filed under Order XXXVII of C.P.C., 1908 as summary suit.

5. On receipt of the summon in the suit, the defendant who is the

petitioner herein has filed an Interlocutory Application in I.A.No.8534 of 2012 under Order XXXVII Rule 3 of C.P.C. to grant unconditional leave to the defendant to defend the above suit.

6.The defendant has raised the ground by saying that the suit is not maintainable under the provision of Order XXXVII of CPC, 1908, and the suit has been filed deliberately under the said provision of law which enables filing of suits only where the defendant has no defense and the suit is bound to be decreed by following a summary procedure. Therefore, the dispute between the plaintiff and the defendant does not fall within the purview and ambit of Order XXXVII of CPC and therefore, the defendant has sought for to be converted into an ordinary suit, enabling the defendant to defend the same unconditionally.

7.The defendant also states that without prejudice to the various submissions on merits, which are to be made by the defendant elsewhere, the following preliminary objections are placed for the purpose of converting the above suit into an ordinary suit as follows:

“(a)The summons received by the Applicant/Defendant, is not accompanied by the plaint

documents, which is a mandatory requirement. It is mandatory to enclose the plaint documents, along with summons, the plaintiff has deliberately withheld the plaint documents, with a view to deprive the defendant the opportunity to raise appropriate defense. However, the present Application is being filed without pursuing the three plaint documents. I respectfully crave leave of this Hon'ble Court to permit me to file additional affidavit, if necessary, at a later point of time.

(b) The suit relief does not fall within the scope and ambit of the provisions of Order XXXVII of C.P.C. In order to bring the suit relief within the ambit of Order XXXVII, the same should fall within any one of the following classes.

(i) suits upon bills of exchange, hundis and promissory notes

(ii) suits in which the plaintiff seeks only to recover a debt or a liquidated demand in money payable by the defendant, with or without interest arising;

(a) On a Written Contract or

(b) On an enactment where the sum

sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty or

(c) on a guarantee where a claim against the principal is in respect of a debt or liquidated demand only.

(c) From the very reading of the above provisions of C.P.C. it is clear that unless the suit relief falls within any one of the above said clauses the same cannot be filed under the provisions of Order XXXVII of C.P.C. In the instant case, the plaint averments do not in any manner bring the suit into the ambit of the above provision.

(d) Even according to the plaint averments, the suit is neither on the basis of a negotiable instrument nor arising out of a written contract etc. The Lease Agreement cannot be treated as a Written Contract, from which the present claim has arisen. As such I am advised to submit that the suit is liable to be treated only as an ordinary suit and in any event cannot be treated as a summary suit. I am

further advised to submit that in the event of the suit not falling under any one of the clauses under XXXVII of C.P.C., the same is liable to be converted into an ordinary suit. However, as a matter of abundant caution, I am taking out the present application, praying for grant of unconditional leave to defend the suit. I crave leave of this Hon'ble Court, in this regard."

8.The defendant further states that the defendant is the owner of the property at New No.12 (Old No.24), 2nd Cross Street, Trustpuram, Kodambakkam, Chennai-600 024, and the plaintiff has taken the Ground Floor portion to an extent of approximately 2300 sq. ft. on lease for the purpose of running a show room, containing furniture, fashion accessories and interior decoration items of all kinds. The defendant further states that though the plaintiff has permitted to make alterations in the interior of the premises, so as to suit the requirements for running the above mentioned business, but the lease agreement has categorically provided in Para-3, that the alterations should not be structural alteration and should not in any way reduce the value and utility of the existing building. The lease agreement had also provided that the premises shall be restored to its original

condition, at the time of handing over the vacant possession by the Lessee. Though the lease period was for a period of 11 months and the same was terminable within a period of three months, by giving notice to either parties, but, within a very short time of taking the property on lease, the plaintiff wanted to vacate the property suddenly during September 2011 and the rent from the month of June 2011 was also not paid by the plaintiff, no notice as contemplated in the agreement was also given by the plaintiff. But the plaintiff has suddenly informed the defendant about the vacating of the premises and the plaintiff also removed all their materials and without the help of any experienced people thereby leaving the entire portion in shambles. After removed the materials in the shop, on account of improper manner in which the interior work was removed, the property required the following repair works:

- “(a)The entire false ceiling which was multilayered (Gypsum board) had to be re-done.
- (b)The electrical fittings and wirings had to be re-done, for putting the property to use.
- (c)The windows in the bath room had to be repaired.
- (d)The Doors which have been removed had to be replaced.

(e)The Partition, which had been removed had to be replaced.

(f)The switches and the Switch Board had been removed and were to be replaced.”

9.The defendants also states that on account of damage caused by the plaintiff, the time taken for repairing the property, in order to put it to use, by another tenant, will also result in loss of rent to the defendant. Therefore, the said losses are also recoverable from the plaintiff. Therefore, in such an event, the defendant is not liable to pay the money as claimed by the plaintiff, the said issues can be proved only by conducting an elaborate trial and letting in necessary evidence by the defendant, as such the defendant has a valid defense and is entitled to defend the suit in accordance with law. Therefore, the defendant prays for to be given an opportunity to defend the suit unconditionally.

10.The defendant also states that the issues involved appreciation of evidence, from the Engineer who has carried out the work and also production of documentary evidence, to prove the expenses incurred by the defendant in repairing the building, it is also

necessary that evidence relating to the loss of rent is let in and the loss of rent has to be substantially proved by the defendant. Therefore, the plaintiff is not entitled to the claim and there are various triable issues which have to be decided by the Court and the same is proved through by way of filing a detailed written statement, therefore, he prays the Court to leave of the Court.

11.The defendant also states that he is entitled to file a Counter Claim against the plaintiff claiming various relief, which could also be done only in the event of leave being granted to him for defending the suit and his valuable right to institute and maintain of counter claim sought to be taken away, by filing a summary suit and awarding a Judgment, without affording an opportunity to defend the same. The plaintiff also states that there is no triable issues in the case and to support his case he relied upon the judgment in the case of **Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply and Sewerage Board** reported in **AIR 2009 SC 1027** it is stated as follows:

"10.Order XXXVII of the Code of civil Procedure provides for a summary procedure. It is not in dispute that having regard to the prayer made in the suit, Order XXXVII of the Code was attracted. Rule 3 of Order XXXVII provides

for the procedure for appearance of the defendant. Rule 5 reads as under:

5.Power to order bill, etc. to be deposited with officer of Court--In any proceeding under this

Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith depositing with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

11.Whether leave is granted unconditionally or upon terms, in view of the aforementioned provision in a case of this nature for all intent and purport, stand on the same footing. However, it is well settled that the defence in the suit should not be considered to be a mere 'moonshine' ruse or sham. Ordinarily, the court shall grant leave to defend the suit in favour of the defendant in terms of the first proviso appended thereto. Rule 3 of Order XXXVII provides for a judgment at the hearing of such summons; Clause 6(b) whereof reads as under:

(6) At the hearing of such summons for judgment--

(a) ...

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

15. This Court in Santosh Kumar v. Bhai Mool Singh MANU/SC/ 0013/1958 : [1958]1SCR1211 noticing that a clear defence to the suit having been made out, no condition could be imposed, stated the law thus:

This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.

18. The learned Judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains.

19. The learned High Court Judge is also error in thinking that even when the defence is a good and valid one, conditions can be imposed. As we have explained, the power to impose conditions is only there to ensure that there will be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion

cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action.

This Court again in *Mechalec Engineers & Manufacturers v. Basic Equipment Corporation* MANU/SC/0043/1976:

[1977]1SCR1060 reiterated the following principles laid down in respect of grant of leave in a summary suit by Das J. in *Sm.Kiranmoyee Dassi v. Dr.J.Chatterjee* (1945) 49 CWN 249:

(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 has 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 show mercy to the defendant by enabling him to try to prove a defence.

It was opined that the case did not fall within clause (e) and unconditional leave should have been granted."

Therefore, the defendant prays the trial Court to grant unconditional leave to the defendant to defend the suit.

12. On receipt of the notice in I.A.No.8534 of 2012, the respondent/plaintiff filed a counter affidavit, by denying entire allegations set out in the petition.

13. The plaintiff states that the suit is very much maintainable under Order XXXVII of Code of Civil Procedure, and that the dispute between the plaintiff and the defendant is fall within the purview and ambit of Order XXXVII of C.P.C. Therefore, the suit is not liable to be converted into ordinary suit as claimed by the defendant. The claim of the defendant is that the suit claim would not come within the ambit of Order XXXVII of C.P.C. is a misconceived claim, the defendant's claim

that the lease agreement cannot be treated as a written contract, is not legally tenable. The defendant has ventured into making such untenable claim without knowing the meaning of the term written contract. Lease agreement is also a written contract, as such the above suit will come within the ambit of Order XXXVII of CPC. During the month of June 2011 itself, the plaintiff company informed the defendant in respect of their intention to vacate the premises during September 2011 and accordingly, the defendant vacated the said premises on 30.09.2011.

14. The plaintiff also states that the defendant is not entitled to any counter claim against the plaintiff as such citing counter claim as a Ground for seeking leave to defend is not permissible. Till date the defendant has neither made any demand nor issued any notice claiming any monies for damages from the plaintiff. The pleadings made by the defendant in the affidavit filed in support of the above I.A. would itself establish the fact that there is no fair, bonafide or reasonable defense; as such the defendant is not entitled to any leave much less unconditional leave to defend the above suit and the judgment of the Hon'ble Supreme Court produced by the defendant is not applicable to this defendant's case and the same is entirely

different. The defendant has ventured into raising triable issues without any basis whatsoever, the above Interlocutory Application has been filed under Order XXXVII Rule 3 of C.P.C. seeking leave of the Court to defend the above suit and the same is not maintainable and therefore, he prays for dismissal of the application filed in I.A.No.8534 of 2012.

15.Considering both side cases, the learned IV Assistant Judge I/c. Of II Assistant Judge, City Civil Court, Chennai has dismissed the petition filed by the defendant in I.A.No.8534 of 2012 on 19.07.2012. The learned Judge says that the ground raised by the defendant that the suit does not fall within the ambit and purview of the provisions of Order XXXVII Rule 3 of CPC and the same is liable to be converted into an ordinary suit, cannot be considered because, as per Ex.R1-Lease deed, it is a written contract between the plaintiff and the defendant in which the defendant had undertaken to refund the advance amount to the plaintiff at the time of vacating the premises. Therefore, the defence reason raised by the defendant is rejected.

16.The learned Judge also states that in respect of the claim of repair and damage, the defendant has to file separate suit and seeking

relief. Therefore, there is no any valid triable issues involved in the suit. Challenging the order passed in I.A.No.8534 of 2012 on 19.07.2012, this Civil Revision Petition has been filed before this Court by the defendant.

17.I heard Mr.Guberan for M/s.Rank Associates, learned counsel appearing for the petitioner and Mr.S.Thankasivan, learned counsel appearing for the respondent and perused the entire records.

18.It is the case of the plaintiff is that he entered into a lease agreement with the defendant for lease of the suit property at No.12 (Old No.24) Ground Floor, Second Cross Street, Trustpuram, Kodambakkam, Chennai-24. At the time of lease agreement, the plaintiff has paid a sum of Rs.7,50,000/- by way of Cheque bearing No.483987 dated 20.07.2010 drawn on Standard Chartered Bank, T.Nagar Branch, Chennai-600 017. As per the lease agreement entered between the plaintiff and the defendant in the month of March 2011, the monthly rent was fixed at the rate of Rs.75,000/-, excluding the monthly maintenance charge of Rs.5,000/-.

19.Due to the loss in the business of the plaintiff company, the

plaintiff was not in a position to continue his business beyond 30.09.2011. Therefore, during the month of June 2011, the plaintiff company informed the defendant about their intention to vacate the premises during September 2011 and accordingly on 30.09.2011 the plaintiff vacate the premises.

20. After vacating the premises, the plaintiff requested the defendant to adjust the monthly rent as well as maintenance charge from the month of June 2011 to September 2011 and pay the balance amount, it is became due and liable to pay a sum of Rs.4,52,857/- to the plaintiff by the defendant. The plaintiff made request to the defendant in the month of October 2011, to return the balance advance amount, but the defendant by in his letter dated 28.10.2011, giving his vague reply to the plaintiff. Therefore, the plaintiff has filed the suit for recovery of amount of Rs.4,61,914/-.

21. It is the case of the defendant that the suit is not comes under the summary procedure, since several issues were to be decided by the Court. Therefore, he filed a petition under Order XXXVII Rule 3 of CPC.

22. For better consideration the Order XXXVII Rule 3 of CPC is extracted hereunder:

“[3. Procedure for the appearance of defendant.-

(1) In suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No.4-A in Appendix B or such Form as may be prescribed, from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount

claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6)At the hearing of such summons for judgment-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may be been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7)The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit."

23.It is the case of the defendant is that while the plaintiff has vacated the premises, he caused more damages in the property. Therefore, he is having right to make counter claim in the suit, unless the suit is to be converted from summary procedure to ordinary suit, his legal right of counter claim will be defeated. In the said Interlocutory Application, on behalf of the defendant's side, no documents or no evidence has been adduced, on the other hand, the plaintiff marked documents as Ex.R1-Lease agreement; Ex.R2-State of account; Ex.R3-E-mail correspondence and; Ex.R4-Board resolution. It is an admitted fact that at the time of entering into lease agreement, the plaintiff has paid a sum of Rs.7,50,000/- as advance and the monthly rent was fixed at Rs.75,000/- and maintenance charges to be paid at the rate of Rs.5,000/- p.m., which were not disputed by the defendant. But, on the other hand, he claimed that for the damages caused by the plaintiff is right of counter claim in the suit will be defeated unless the suit will be converted into ordinary suit.

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24.As per the provision under Order XXXVII Rule 3 CPC, whether the petition filed by the defendant is maintainable or not? As per the provision under Order XXXVII Rule 3 CPC, the defendant has disclosed

the facts do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. In this case, it is admitted by the defendant that the plaintiff has paid a sum of Rs.7,50,000/- as advance amount. The monthly rent from June 2011 to September 2011 along with the maintenance charges at Rs.5,000/- has been paid and the same is to be adjusted from the advance amount and therefore, the balance amount of Rs.4,52,857/- should be paid by the defendant. The defendant claim is that the plaintiff has caused damages and repair in the portion of the rental premises. Therefore, to compensate the same, the defendant has kept the said balance amount given to the plaintiff. Once the defendant has agreed that there is a due amount of Rs.4,52,857/- from him to the plaintiff, then the defendant is not entitled for leave to defend the suit.

25.Per contra, the learned counsel appearing for the plaintiff has produced a Judgment rendered by the Hon'ble Supreme Court in the case of ***M/s.Mechalec Engineers and Manufacturers v. M/s.Basic Equipment Corporation*** reported in ***AIR 1977 Supreme Court 577***. The Hon'ble Supreme Court laid down the principles while dealing the applications leave to defend, grant to be followed. The

following principles are to be followed while considering the question of granting leave to defend:

(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 has 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 show mercy to the defendant by enabling him to try to prove a defence."

26.As per the order of the Hon'ble Apex Court, 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. 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.

27.As per the affidavit filed by the petitioner, there is no defense for the defendant, since his claim in the petition is that the summary suit under Order XXXVII of C.P.C. will lie only against the suit upon hundis and promissory note. Therefore, in the case on hand, there is no written contract between the plaintiff and the defendant and hence the suit filed under Order XXXVII of C.P.C. for summary suit is not maintainable and the suit should be converted into ordinary suit. In yet another ground claiming by the defendant is that there is a claim of damages and repairs to be made by the defendant by way of counter claim in the suit. Except that there is no other defence raised by the defendant.

28.Admittedly, though the plaintiff vacated the premises on 30.09.2011, there is no claim till date by way of issuing notice to the plaintiff at any point of time, claiming damages, repairs and expenses. Thus being the position, the defendant have no right to claim or counter claim in this suit except he can file a separate suit to be filed against the plaintiff for claiming the damages and repairing of the rental portions building. Therefore, except the above two points, this defendant have no other defense in the suit and the Hon'ble Supreme

Court also in the judgment referred above has made clear that the defendant should make the defenses with honest and bonafide, since the defense raises in this case by the defendant is not really a triable issue. Therefore, this defendant is not entitled for leave to be granted in this suit as prayed in the petition in I.A.No.8534 of 2012.

29. Therefore, the order passed by the learned IInd Assistant Judge, City Civil Court, Chennai, in I.A.No.8534 of 2012 in O.S.No.1038 of 2012, dated 19.07.2012, is well considered order and there is no necessity arose to this Court for warranting interference in the said order and hence this Civil Revision Petition is liable to be dismissed.

30. In the result, this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.8534 of 2012 in O.S.No.1038 of 2012, dated 19.07.2012, on the file of the learned IInd Assistant Judge, City Civil Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

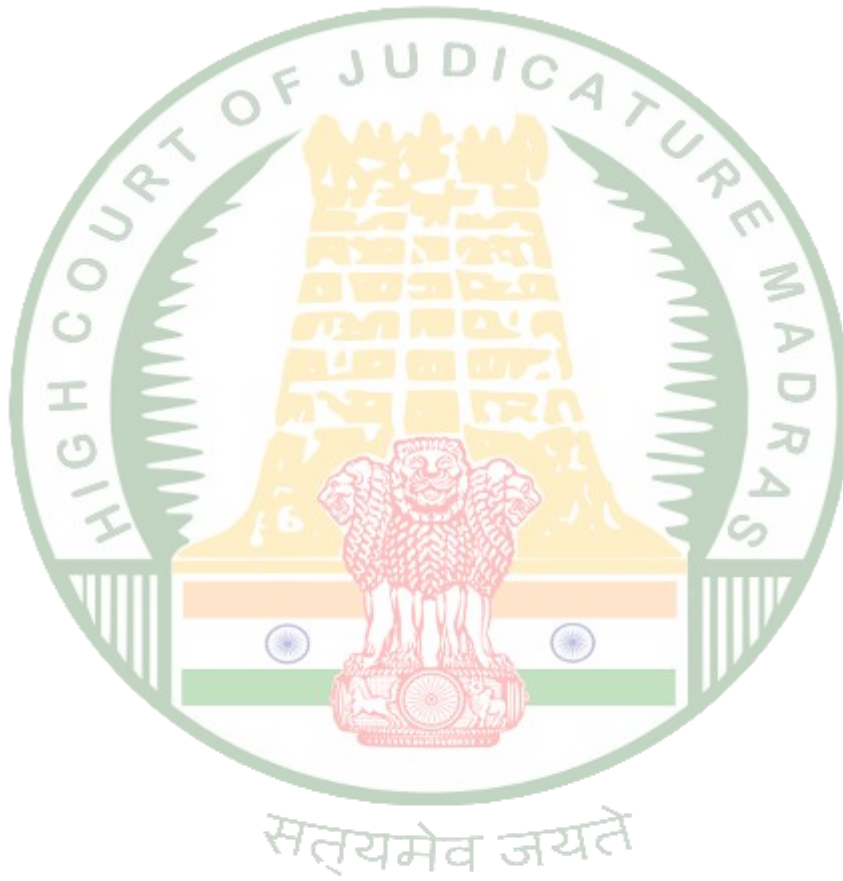
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To

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M.V.MURALIDARAN, J.

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**Pre-Delivery order made in
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