

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 1001 of 2018

and

CMP. No. 5352 of 2018

M. Thiyagarajan

.. Petitioner

Vs

1. United Traders  
Rep. by its Proprietor  
S. Gopikrishnan

2. N. Suresh  
3. M. Pushpavalli

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order of the learned VII Additional City Civil Judge, Chennai in I.A. No.12428 of 2016 in O.S. No.2519 of 2016 dated 08.01.2018 and allow the interim application and reject the plaint as against the petitioner/ 1st defendant herein.

For Petitioner : Mr. M. Venkatakrishnan

**ORDER**

This Civil Revision Petition is filed to set aside the order of the learned VII Additional City Civil Judge, Chennai in I.A. No.12428 of 2016 in O.S. No.2519 of 2016 dated 08.01.2018 and allow the interim application and reject the plaint as against the petitioner/ 1st defendant herein.

2. Heard the learned counsel for the petitioner and the civil revision petition is disposed of, at the stage of admission itself.

3. The 1st respondent has filed the suit in O.S. No.2519 of 2018 for recovery of money. In the aforesaid suit, the revision petitioner filed an application in I.A. No. 12427 of 2016, under Order VII Rule 11(a) & (d) of CPC to reject the plaint. According to the petitioner, the aforesaid suit filed by the 1st respondent is barred by limitation. It is the specific case of the petitioner that the cause of action arose at Koyambedu, Madras, when the supplies were made till 27.06.2012, subsequently executed an undertaking letter revalidating the cheques

that had been issued earlier, as set out in the tabular column from 21.07.2013 to 02.08.2013 and when the cheques were bounced in the year 2013. From the above said cause of action, as per Article 14 of the Limitation Act, any suit for recovery of the price of goods sold and delivered, where no fixed period of credit is agreed upon, is three years from the date of delivery. Under Article 15, any suit for recovery of the price of goods sold and delivered after the expiry of a fixed period of credit, is three years from the date of expiry of credit period. Therefore, without any pleading in the plaint, the present suit has been filed beyond the period of three years. Further, in the light of admission of the 1<sup>st</sup> respondent that the cheques were dishonoured on presentation, without following the procedure under the Negotiable Instruments Act. Notice has been received by the petitioner that the aforesaid cheques has been dishonoured. Therefore, the suit filed by the 1st respondent is barred by limitation. The learned counsel for the petitioner would submit that the suit filed by the 1st respondent is liable to be rejected under Order VII Rule 11(d) of CPC.

4. On perusal of the averments and cause of action in the plaint

as presented in the aforesaid suit filed by the 1st respondent, it is found in paragraph 4 of the plaint that the 1st and 2nd defendant being one of the shop owners and supplies have been made on credit during 13.04.2012 and 27.06.2012 and for the value of supplies the 1st defendant had issued certain cheques in the year 2012 and the same was dishonoured and hence issued an undertaking dated 10.07.2012. As per the undertaking, the details of the similar cheques issued altering the dates, details of cheques, sum assured etc., are also given in the said paragraph 4. In spite of the assurance given by the petitioner for honouring the cheques on presentation on the due dates, on 21.09.2013 all the cheques have been dishonoured for want of funds. It is further submitted that as per the said paragraph, the limitation for filing the said suit commences from 21.09.2013, as the cheques issued by the 1st respondent has been returned. The respondent has also stated that the cheques were presented on 21.09.2013 and the same were bounced. In the list given in paragraph 4 of the plaint, the details of the cheques are shown. Therefore, there is a disputed fact of limitation.

5. Considering the averments stated in the aforesaid paragraph,

this Court is not inclined to go into the disputed fact and entertain this Civil Revision Petition. Therefore, the Civil Revision Petition is dismissed and the order of the court below in I.A. No.12428 of 2016 in O.S. No.2519 of 2016 dated 08.01.2018 is confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.03.2018

Index: Yes/ No

Speaking Order/Non Speaking Order

[Issue order copy on 04.05.2018]

avr

To

The VII Additional City Civil Judge,  
Chennai.

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D. KRISHNAKUMAR J.,

avr



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