IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2018
Delivered on : 12.10.2018

Coram

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD)No.1922 of 2005
and
C.M.P.No.17225 of 2005

Batliboi Limited
Rep. by its Branch Manager,
25, R.H.Road, Royapettah
Chennai - 600 014 ...Petitioner

Vs

Refrigeration Accessories Ltd
Rep. by its Branch Manager,
K.S.Ravindran,
740 Anna Salai,
Chennai - 600 002 ...Respondent

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the Fair and Decreetal order dated 24.06.2004 made by the XIII Asst. Judge, City Civil Court, Chennai in I.A.No.3065 of 2004 in O.S.No.109 of 2004.

For Petitioner : Mr.N.Ganesan
For Respondent : Mr.C.P.Pattabiraman

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned XIII Assistant Judge, City Civil Judge, Chennai in I.A.No.3065 of 2004 in O.S.No.109 of 2004 dated 24.06.2004, in and by which the learned Judge had dismissed the application filed by the revision petitioner seeking leave to defend the suit O.S.109 of 2004.

2. The facts in brief essential for the disposal of the revision are narrated herein below:

2.1. The revision petitioner herein had filed the suit O.S.No.109 of 2004 in the file of the XIII Assistant Judge, City Civil Court, Chennai for recovery of a sum of Rs.1,24,494/-

together with future interest on Rs.48,180/- at 24% per annum from the date of the plaint till date of realization.

2.2. The said amount was due towards the purchase of spares and accessories for Air conditioners and Refrigerators and towards non return of gas cylinders.

2.3. That the respondent and revision petitioner were having a running account from 05.06.1998 till 30.01.2001. After giving credit to the payments made by the Revision Petitioner a sum of Rs.48,180/- was due as on 31.12.2000. Despite a demand being made by the respondent vide their letter dated 24.11.2003 neither the reply nor the payments was forth coming constraining the Respondent to file the under chapter Suit.

3. After receiving the summons in the above suit, the revision petitioner came forward with the application seeking leave to defend the suit. The revision petitioner in the affidavit filed in support of the said petition had put forward the following issues which according to them were the triable issues.

(a) That the suit is hopelessly barred by limitation.

(b) That the parties do not have a running account.

(c) Ledger account relied upon by the respondent was false.

(d) All payments had been discharged by the revision petitioner.

4. The respondent herein had filed a detailed counter statement denying the issues raised by the revision petitioner and inter alia contending that the defense portrayed is a sham one and a moonshine defense. The respondent had contended that the revision petitioner had issued a cheque for Rs.21,350/- on 31.12.2000 and that the suit was filed on 29.12.2003 and therefore the suit was not hit by lis pendens. They would once again reiterate that the account that they had with the revision petitioner was a running account.

5. After hearing the submissions on either side, the learned XIII Assistant Judge, City Civil Court, Chennai dismissed the application and it is aggrieved by the order that the revision petitioner is before this Court

6. Heard Mr.M.Ganesan, learned counsel appearing on behalf of the petitioner. He would contend that the revision petitioner had raised the following triable issues that have to be decided in the suit

a) The suit was barred by limitation since the amounts were claimed with reference to supplies effected in the year 1998 and the suit is filed in the year 2003.

b) That the petitioner and the respondent did not have a running account.

c) All payments due to the respondent had been cleared .

7. He would therefore contend that the leave should be granted to the revision petitioner to defend the suit.

a) He had relied on the judgment of the Honourable Supreme Court in Ishwar Dass Jain (dead) through LRs Vs. Sohan Lal (dead) by LRs reported in AIR 2000 SC 426 in support of his contention that extracts from account books can only be considered summary evidence and unless the original books are produced, the entries cannot be cross-checked.

b) The judgment of this Court in P.Sood & Co. Vs. Peerchand Misrimalji Bhansali reported in 2005(3) CTC 12 was cited in support of the argument that entries made in accounts book cannot be relied upon since the author of the document has not been examined.

c) G.Rajarajan Vs. AIG Consumer Financial Services (India) Ltd., reported in 2012(5) CTC 313 to contend that in an application under Order XXXVII Rule 3(5) it would suffice if the defendant show/disclose some facts which are triable in nature. Valuable rights to defend cannot be taken away in a casual manner.

d) The judgment in Madras Cements Ltd., Vs. T.M.T. Kannammal Education Trust reported in MANU TN 2754 2014 (2015 (1) LW 312) which once again reiterates the position that extracts of account books cannot be considered as primary evidence.

8. Per contra, Mr.Francis Ashok, learned counsel appearing on behalf of the Respondent would contend that the suit is very much in time as the last payment was received from the Revision Petitioner on 30.12.2000 and that they had a running account till December 2000. The counsel had also contended that the defense raised was illusory, moonshine, sham and lacking in bonafides.

9. Heard the submissions of the parties and perused the record.

10. The revision petitioner has raised three grounds for seeking leave:

a)The suit is barred by limitation;

b)the parties did not have any running account, and;

c)That the revision petitioner has cleared all their outstandings to the petitioner.

11. As regards the 1st point, the petitioner would contend that the invoices filed along with the plaint all relate to the year 1998 whereas the suit is filed in the year 2003. He would further contend that the parties did not have a running account

and that towards the invoices raised in 1998 all amounts have been paid and cleared. However, as rightly pointed out by the learned counsel for the respondent the respondent has paid a sum of Rs.21,350/- by a cheque dated 30.12.2000 which was also given due credit to in the revision petitioner's account and the suit was filed on 29.12.2003 and therefore there is no question of the suit being barred by limitation. The revision petitioner has not denied the Cheque nor contended that this cheque was not issued by them. Therefore the 1st argument lacks bonafides.

12. As regards the 2nd ground, the revision petitioner has not denied the ledger account filed by the respondent which would clearly show that the revision petitioner has been purchasing material on credit basis and later making payments. The petitioner who claims to have cleared the entire amounts has not provided any details in this regard.

13. It therefore appears that the defense taken by the revision petitioner is illusory and a moonshine.

14. The rationale in the judgments relied upon by the revision petitioner is to be tested only when the evidence is adduced and the same is irrelevant at this stage.

15. Consequently, I find no infirmity in the order of the XIII Asst. Judge, City Civil Court, Chennai in I.A.No.3065 of 2004 in O.S.No.109 of 2009 and therefore dismiss the Civil Revision Petition.

16. In the result the Civil Revision Petition is dismissed and the order of the XIII Assistant Judge, City Civil Judge, Chennai in I.A.No.3065 of 2004 in O.S.No.109 of 2004 dated 24.06.2004 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The XIII Assistant Judge,
City Civil Court,
Chennai.

Copy to:

The Section Officer,
VR Section, High Court,
Madras.

C.R.P(NPD)No.1922 of 2005

KGK(CO)
GSP(30/10/2018)