

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(NPD) No.3341 of 2017 and
C.M.P.No.15544 of 2017

M/s. Kiran Global Chems Limited,
represented by K.G.Prem @ Prem Kumar,
(Cause title accepted vide order of Court
dated 26.07.2016 by MDJ,
made in ... Petitioner/ Petitioner/
CMP.No.11665 of 2016 in CRP Defendant
(NPD) Sr.43253 of 2016).

Vs.

M/s. Damco India Private Limited,
Represented by its Authorised Signatory
G.M.Balaji. ... Respondent/Respondent/
Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of
Civil Procedure Code to set aside the fair and decreetal order
in I.A.No.8109 of 2015 in O.S.No.2046 of 2015, passed by the
learned IV Assistant Judge (In charge of III Assistant Judge),
City Civil Court, Chennai, dated 10.09.2015.

For Petitioner : Mr.P.Raja
For Respondent : Mr.P. Giridharan

O R D E R

The respondent has filed the suit against the revision
petitioner in O.S.No.2046 of 2015, on the file of the III
Assistant Judge, City Civil Court, Chennai, under Order XXXVII
of Code of Civil Procedure, 1908 as a summary suit. After
receiving the summons, the revision petitioner has filed an
Interlocutory Application in I.A.No.8109 of 2015 to defend the
suit since he has got triable issues. After hearing the
arguments, the trial court dismissed the above application
filed by the revision petitioner. Being aggrieved with the
order passed by the trial court in I.A.No.8109 of 2015, the
present revision petition has been filed.

2. The learned counsel for the petitioner submitted that
after receiving summons, since the petitioner found that there
is a triable issues involved in the suit, he filed application
to defend the suit. There is a dispute with reference to
payment. Therefore, the present suit filed under Order
XXXVII of Code of Civil Procedure, 1908, as a summary suit is

bad and the relief claimed in the plaint does not fall within the ambit of this rule.

3. The learned counsel for the respondent would submit that the petitioner himself, has admitted his liability by way of an email. Therefore, the present suit is maintainable under Order XXXVII of Code of Civil Procedure, 1908, as a summary suit. Therefore, there are no triable issues.

4. Heard both sides and perused the records.

5. On a perusal of the records and after hearing the learned counsel for both the petitioner and the respondent, this Court is of the view that there are triable issues in the suit. The petitioner being the defendant has admitted the transaction between him and the respondent/plaintiff. Both sides have agreed that certain amounts have been repaid by the petitioner. The dispute is only with regard to what is the balance amount to be paid. This issue cannot be decided without parties entering into the box and giving evidence by producing documents payment made by the revision petitioner/defendant. Therefore, certainly there are issues which have to be tried by the trial court. Therefore, this Court is of the view that the order of the trial court warrant interference.

6. The trial court is directed to convert the present suit into a regular suit. The petitioner is given two weeks time to file written statement. The trial court is directed to frame issues after filing written statement based on pleadings and draft issues if any, filed by the parties. The trial court is further directed to complete the trial within a period of two months thereafter.

7. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msm

To

The IV Assistant Judge (In charge of III Assistant Judge),
City Civil Court, Chennai.

+ 1 cc to M/s. R. Swarnavel, Advocate SR.40576

+ 1 cc to Mr.P.Giridharan, Advocate Sr.40764

CRP(NPD) No.3341 of 2017

AK(CO)

EU(25/07/2018)

<https://hcservices.ecourts.gov.in/hcservices/>