

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P. (NPD) No.1181 of 2006
and M.P.No.1 of 2006

1.M/s.Jayam & Co.

represented by its partner,
AA 147 III Avenue,
Anna Nagar,
Chennai - 40.

2.Mr.Jayaprakash ...Petitioners

vs.

M/s.Anchor Daewood Industries Ltd.

Represented by its Senior Branch Manager,
Old No.37, New No.6, Arcot Road,
Vadapalani,
Chennai - 26.

Amended as per order passed in
the memo dated ...Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order made in I.A.No.1887/04 in O.S.No.6024/03 dated 29.6.06 on the file of V Asst. Judge, City Civil Court, Chennai.

For Petitioners : M/s.S.Vijayakumar
For Respondent : No Appearance

ORDER

No representation on the side of the respondent.

2.The petitioners are the defendant in the suit. The suit was filed by the respondent for recovery of money on account of goods sold and delivered to the petitioners. The suit was filed under Order 37 Rule 3 CPC as a summary suit. The petitioners filed a leave to defend application in I.A.No.1887 of 2004 in O.S.No.6204 of 2003, before the Vth Asst. Judge, City Civil Court, Chennai seeking unconditional leave to defend the suit.

2.1.The respondent had also filed its counter before the Trial Court in the leave to defend application. In the affidavit filed in support of the application seeking unconditional leave to defend, the petitioners have categorically averred that a sum of Rs.1,47,645/- was paid to

the respondent towards the payment for the goods purchased by them.

2.2.Paragraph No.5 of the affidavit states as follows:

According to the petitioners cheque issued to the respondent was duly credited into the account of the respondent and the allegation made in the plaint that the cheque was returned dishonored on the ground that insufficient of funds is mischievous and malafide.

3.The learned counsel for the petitioners submit that the even though the petitioners had raised a triable issue, the Trial Court has erroneously dismissed the leave to defend application. The learned counsel further submitted that even though the plaintiff has made an averment in the plaint that the cheque dated 24.06.2000 for a sum of Rs.1,47,645/-, issued by the petitioners to the respondent was returned dishonored for insufficient of funds, the respondent has not filed a copy of the dishonored cheque as a suit document.

4.Prima facie this Court, is of the view that the Trial Court ought to have considered the issue as to whether the cheque issued by the petitioners to the respondent was credited into the bank account of the respondent or not as a triable issue.

5.The learned counsel for the petitioner, then drew the attention of this Court to the application filed by the respondent in I.A.No.7152 of 2004 in O.S.No.6024 of 2003, before the Trial Court seeking for an amendment of the plaint filed in O.S.No.6024 of 2003. He produced the order dated 06.10.2005, passed in I.A.No.7152 of 2004, wherein the Trial Court has recorded the averment contended in the affidavit filed by the respondent which reads as follows:

2...The petitioner is the plaintiff in the suit. The petitioner filed the suit for recovery of amount from the respondents. The respondents last payment towards the dues was on 24.6.2000 by way of a cheque bearing No.297655, dated 24.6.2000 for a sum of Rs.1,47,645/-. The above cheque was realised and the petitioner has given due credit for the above said sum. However while drafting and typing the plaint, by mistake in paragraph 6 it has been wrongly typed that the said cheque was dishonored by the Banker of the first respondent.

While preparing the plaint in this suit due to oversight the above said typographical error has occurred and the petitioner regrets for the error. Therefore the last sentence in para 6 of the plaint

~~https://hcservices.ecourts.gov.in/hcservices~~ deleted. If the petition is not allowed the

petitioner would be caused great hardship. Hence the petition.

6.The learned counsel for the petitioners submit that subsequent to the filing of suit, the respondent has admitted the realization of the cheque dated 24.06.2000 for a sum of Rs.1,47,645/-, which was earlier denied in the plaint. According to the learned counsel, the entire suit claim has been paid by the petitioners to the respondent.

7.Having considered the submissions made by the learned counsel for the petitioners and after having perused the materials available on record, this Court is of the considered view that the Trial Court ought to have allowed the leave to defend application filed by the petitioner. Therefore the order is erroneous, per se illegal and suffers from material irregularity.

8.Accordingly, the Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is also closed. However, there shall be no order as to costs.

9.On filing of the written statement by the petitioners, the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of the written statement.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pam
To,

The V Assistant Judge, City Civil Court, Madras

+1cc to Mr.S.Vijayakumar, Advocate Sr.No.22750

SJ(CO)
sm:17.4.2018

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