

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.3936 of 2016

in

C.S. No.518 of 2016

M/s.Green Media Designs
Rep. by its Partner,
R.Purushothaman,
having Office at
No.54, Jubli Road,
A2, Mahaathi,
West Mambalam,
Chennai-600 033.

..Plaintiff

-Versus-

1.M/s.Vijaya Bhargavi Entertainment
Represented by its Power Holder,
Mr.T.Mannan
8/28, Gopakakrishnan Road,
T.Nagar, Chennai 600 017.

Also at

No.2C, 1st Floor, Veekay Manor,
Gopalakrishnan Iyer Road,
T.Nagar,
Chennai-600 017.

2.M/s.Real Image Media Technologies (P) Ltd.,
Represented by its Chief Officer, Mr.Anil,
No.42, Dr.Ranga Road,
Mylapore,
Chennai-600 004.

3.M/s.Gemini Colour Laboratory,
Gemini Industries and Imaging Private Ltd.,
No.28, New Bangaru Colony,
K.K.Nagar, Chennai-600 078.

..Defendants

A.No.3936 of 2016:-

1.M/s.Vijaya Bhargavi Entertainment
Rep. by its Power Holder,
Mr.T.Mannan
8/28, Gopakakrishnan Road,
T.Nagar, Chennai 600 017.

..Applicant/1st Defendant

-Versus-

1.M/s.Green Media Designs
Rep. by its Partner,
R.Purushothaman,
No.54, Jubli Road,
A2, Mahaathi,
West Mambalam,
Chennai-600 033.

...1st Respondent/Plaintiff

2.M/s.Real Image Media Technologies (P) Ltd.,
Represented by its Chief Officer, Mr.Anil,
No.42, Dr.Ranga Road,
Mylapore,
Chennai-600 004.

3.M/s.Gemini Colour Laboratory,
Gemini Industries and Imaging Private Ltd.,
No.28, New Bangaru Colony,
K.K.Nagar, Chennai-600 078.

...2nd & 3rd Respondents/ 2nd &
3rd Defendants

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.518 of 2016 on the ground that it is barred by limitation and that the suit is not maintainable.

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This Application coming on this day before this Court for hearing, the Court made the following order:

The first defendant in the Suit is the applicant herein. The applicant/first defendant has filed this Application under Order VI, Rule 11 CPC, seeking for rejection of the plaint.

2. M/s. Revathi Manivannan, the learned counsel appearing for the applicant submits that the suit is liable to be rejected mainly on the ground that the same has been laid by an unregistered Partnership Firm, which is not maintainable and the suit is also barred under Section 69 of the Partnership Act. Further, she submitted that the suit filed by the plaintiff is an abuse of process of law.

3. Mr. M.L. Joseph, the learned counsel appearing for the first respondent/plaintiff submitted that the application filed by the applicant/first defendant for rejection of the plaint on the ground that the suit is filed by an unregistered Firm is not maintainable as Section 69 of the Partnership Act does not act as a blanket ban for filing suit by an unregistered Firm. Further, the contention of the first defendant/applicant that the suit is an abuse of process of law cannot be a ground for rejection of the plaint, as the said issue can be adjudicated only during trial and not at this stage. Therefore, he submitted that the application is liable to be dismissed.

4. Heard the learned counsel appearing for the applicant/first defendant and first respondent/plaintiff and perused the affidavit, and counter affidavit filed in relation to the application for rejection of the plaint.

5. It is a settled law that plaint can be rejected only on the basis of the allegations/averments made in the plaint and even in such case, the documents filed in support of the plaint has to be taken into consideration and at this stage, the Court cannot make a roving enquiry to find out as to whether there exists a cause of action to institute the suit or not. Similarly, no iota of evidence or pleading of the defendants can be considered at this stage for granting such relief.

6. Be that as it may, the only contention of the learned counsel appearing for the applicant is that the suit is barred by law and is not maintainable since it has been instituted by an unregistered Firm. On perusal of the entire pleadings, this Court finds that the suit is filed for the relief of recovery of money. Though the suit is filed on the basis of the agreement stated to have been entered into between the parties (viz., the first defendant and the plaintiff) dated 04.09.2015, and what transpired after the agreement is that, the first defendant appears to have issued a cheque, dated 18.11.2015 for a sum of Rs.25,00,000/- in favour of the plaintiff, which was subsequently dishonoured and statutory complaint also appears to have been filed.

7. Therefore, on perusal of the entire pleadings, it is clear that the suit itself is not filed on the original cause of action and though the agreement dated 04.09.2015, is relied on, simultaneously, the cheque, dated 18.11.2015, which was dishonoured, is also relied upon by the first respondent/plaintiff for recovery of money. When such being the position, it is settled law that the suit cannot be rejected merely on the ground that the plaintiff-Firm is an unregistered Firm. Further, as held by the Hon'ble Apex Court, in a decision rendered in the case of **Raptakos Brett & Co. Ltd. Vs. Ganesh Property**, reported in [(1998) 7 SCC 184], Section 69 (2) of the Indian Partnership Act cannot bar the enforcement of a suit by an unregistered Firm in respect of the statutory right or common law right. In fact, the said decision was followed by the learned Single Judge of Kerala High Court in the case of **Afsal Baker Vs. Maya Printers and five others**, in C.R.P.No.640 of 2015, dated 09.12.2016 and the Court held that, by virtue of Sections 30 and 37 of the Negotiable Instruments Act, on the dishonour of a cheque, the statute creates a liability on the drawer of the cheque, apart from general law of contracts. When the statutory right is created on the dishonour of the cheque, the suit filed on the basis of the dishonour of the cheque as well as contract, cannot be rejected in part. It is all matter of evidence whether or not, the plaintiff has purely relied on an unregistered

contract for recovery of entire amount and it is open to the defendants to raise all their defence during trial. Therefore, at this stage, the suit cannot be rejected. Consequently, the application stands dismissed. The defendants are granted time till 16.12.2019, for filing written statement.

Sd./-N.S.K.J
27/11/2019

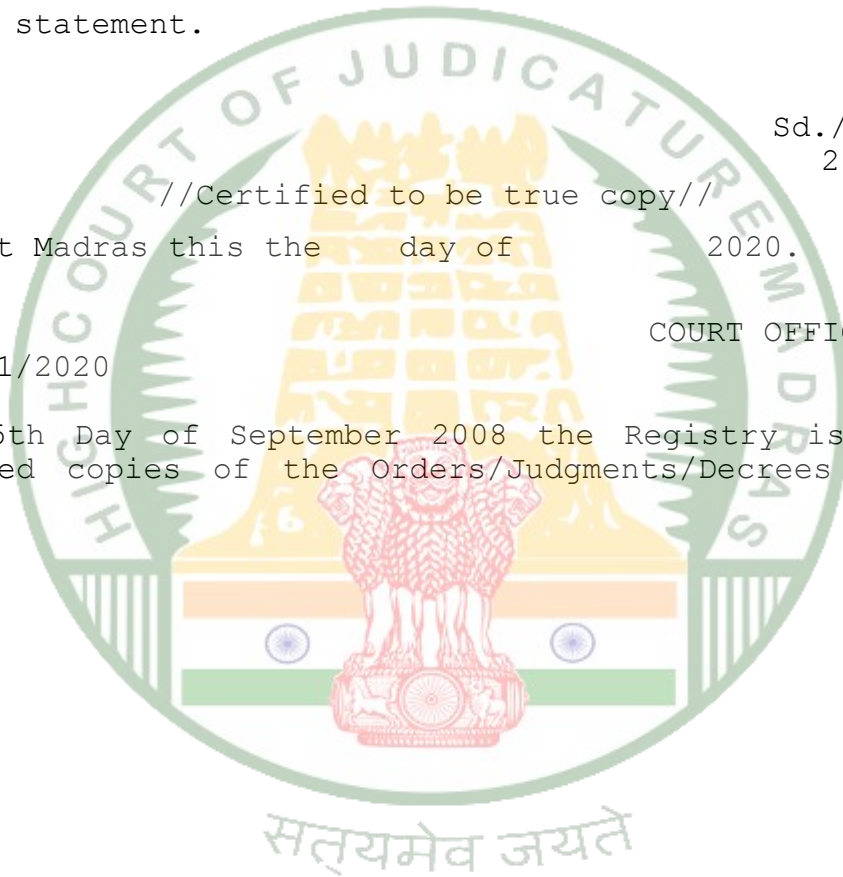
//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

jj 13/01/2020

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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