

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM :

THE HON'BLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) No.2431 of 2018

and

C.M.P. No.14944 of 2018

B.J.Gopinath

... Revision Petitioner

Vs.

M.Geetha Devi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 24.04.2018 made in I.A.No.14768 of 2017 in O.S.No.4515 of 2017 on the file of the XVII Assistant Judge, City Civil Court, Chennai and allow this Civil Revision Petition.

For Petitioner : Mr.P.C.Harikumar
for M/s.P.C.Harikumar Associates

For Respondent : Mr.N.K.Suresh Kumar

ORDER

The above Civil Revision Petition has been filed challenging the order, passed by the learned XVII Assistant Judge, City Civil Court, Chennai, dismissing the application filed by the revision petitioner seeking leave to defend the suit in O.S.No.4515 of 2017 and consequentially decreeing the suit in O.S.No.4515 of 2017.

2.The brief facts which are essential to dispose of this revision petition are as follows :

3.The respondent/plaintiff has filed the suit in O.S.No.4515 of 2017 invoking the provisions of Order XXXVII Rule 1 & 2 of CPC for recovery of a sum of Rs.8,85,324.65 allegedly due towards supply of Box-Strap Manual & Heat Sealing Machines, tools, B.O.P. Self Adhesive Tapes, etc. It is the case of the respondent/plaintiff that the payments were not made, despite supply of the goods having been effected. It is seen that earlier legal notice was issued on 18.04.2017, to which, the revision petitioner has filed a reply, dated 27.05.2017, denying the receipt of goods in certain invoices and also contending that the claim was totally without any basis. The original legal notice was issued based on a running ledger account. Thereafter, the respondent/plaintiff had issued yet another notice dated 14.07.2017 on the basis of various invoices, demanding payment of the same amount and thereafter, the respondent/plaintiff has filed the suit in question.

4.On receipt of summons in the said suit, the revision petitioner/defendant had filed I.A.No.14768 of 2017 for an unconditional leave to defend the suit. The revision petitioner had put forward the following triable issues :

(a) The summary suit based on a running account is not maintainable.

(b) The fact that the earlier notice was based on the running account and the second notice was based on the invoices, would clearly establish that two sets of accounts are being maintained by the revision petitioner.

(c) Invoices have been fabricated and there is no proof to show that the supply has been effected.

(d) Payments made by the revision petitioner is not reflected in the account.

5.The said application was objected to, by the plaintiff and ultimately, by an order dated 24.04.2018, the said application for leave to defend was dismissed by the learned XVII Assistant Judge, City Civil Court, Chennai, on the ground that, the petitioner has not substantiated his case and that the defence has been taken only for the sake of obtaining leave.

6.Challenging the said order, the defendant is before this Court, by filing the present Civil Revision Petition.

7.Mr.P.C.Harikumar, learned counsel appearing on behalf of the revision petitioner would submit that the perusal of documents marked as

Ex.R12 and R14 would clearly establish that, initially, the petitioner claimed to have been maintaining a running account, whereas later, the claim was on an invoice to invoice basis, only to bring the suit within the provisions of Order XXXVII Rule 1 and 2 of CPC. He would further point out that the defendant, in response to these legal notices, vide Ex.R13 and R15, has categorically stated that, for many of the invoices listed, supply has not been made and the plaintiff has not proved the supply.

8.Per contra, Mr.N.K.Suresh Kumar, learned counsel appearing on behalf of the defendant would submit that, various invoices that are being filed would show that the goods have been delivered and necessary endorsements have been obtained from the defendant's representatives.

9.Heard the learned counsel for both sides and perused the materials on record.

10.From a reading of the documents and pleadings, it is seen that the defendant has made out the triable issues, particularly with reference to the delivery of goods, maintenance of account and also the fact that certain of the documents appear to be suspicious. In view of the above defence, the learned XVII Assistant Judge, City Civil Court, Chennai, ought to have granted leave to defend, instead, he has dismissed the same. It is also seen that the

defence is not a moonshine but a substantial defence, that is being put forward.

11. Therefore, the order of the XVII Assistant Judge, City Civil Court, Chennai, made in I.A.No.14768 of 2017 in O.S.No.4515 of 2017 is set aside and the defendant is granted leave to defend the suit. In view of allowing the defendant to contest the suit, by exercising the rights of this Court under provisions of Order 37 Rule 4 of CPC, the decree passed in O.S.No.4515 of 2017 is set aside and the learned XVII Assistant Judge, City Civil Court, Chennai, is directed to take back the suit on file and dispose of the same after the written statement of the petitioner/defendant is filed. The suit shall be disposed of within a period of eight months from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order

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P.T.ASHA, J.

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To

The XVII Assistant Judge,
City Civil Court,
Chennai.



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