IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.269 of 2018
and
CMP.No.1476 of 2018

1.M/s.THOUGHTBOX,
Represented by its Director Shanawas
Regd Off.No.115/193/2, Banaswadi Extn.,
Near Ayyapa Temple, M.S.Nagar Post,
Bangalore-560 003.

2.Mr.Shanawas
Director,
M/s.THOUGHTBOX,
Regd Off.No.115/193/2, Banaswadi Extn.,
Near Ayyapa Temple, M.S.Nagar Post,
Bangalore-560 003. ... Petitioners/Petitioners/
2nd and 3rd Defendants

-vs-

1.M/s.Zebronics India Pvt. Ltd.,
(Formerly known as "Topnotch Infotronix (India) P Ltd")
Represented by its Power of Attorney Holder Ms.Shubha,
No. 6-C, Valliammal Road,
Vepery, Chennai – 600 007. ...1st Respondent/ 1st Respondent
/Plaintiff

2.Mr.Santhosh
CEO IPL CSK Team
C/o M/s.THOUGHTBOX,
Regd Off.No.115/193/2, Banaswadi Extn.,
Near Ayyapa Temple, M.S.Nagar Post,

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Bangalore-560 003. ... 2nd Respondent/ 2nd Respondent /1st Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order, dated 19.07.2017 passed in I.A.No.6033 of 2016 in O.S.No.6919 of 2015 on the file of the II Additional City Civil Court at Chennai.

For Petitioners : M/S.Anil Relwani
For Respondents : No appearance for R1
: Not ready in notice for R2

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ORDER

This Civil Revision Petition is filed, challenging the order, dated 19.07.2017, passed by the learned II Additional City Civil Judge, Chennai, dismissing I.A.No.6033/2016, filed by the 2nd and 3rd Defendants, in O.S.No.6919/2015, to dismiss the suit as against them, by relying on the admission of the plaintiff, as contemplated under Order 12 rule 6 of CPC.

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2.The brief facts of the case are as follows.

a. The 1st respondent herein had filed the suit in O.S.No.6919 of 2015 on the file of the II Additional City Civil Court, Chennai for a recovery of a sum of Rs.19,44,629/- with future interest at 24 % per annum on the said sum. The amounts were due, as claimed by the 1st respondent, on the basis of an agreement that they had entered into

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with the the defendants for Official Partner Sponsorship 2014, for the 5 one day international series held between Sri Lanka and India, held between 2.11.2014 to 16.11.2014 at various places in India. The plaintiff had impleaded the 2nd and 3rd defendant on the ground that they had also received the amounts under the said contracts. When the suit was pending, the defendants 2 and 3 came forward with an application under the provisions of Order 12 Rule 6 of the Code of Civil Procedure for dismissing the suit in O.S.No.6919/2015 as against them.

b. The ground, on which the said petition was moved was the statement made in paragraph No.12 of the affidavit filed in support of the attachment petition wherein the plaintiff had referred to the 2nd defendant as an Agent of the 1st respondent for receipt of money. Therefore, it is contention of the of the defendants 2 and 3/revision petitioners that suit had to be dismissed against them.

c. The plaintiff had filed a counter, interalia, contending that the said application is not maintainable and that the revision petitioners cannot rely on selective portions of the affidavit to have the suit dismissed against them. The plaintiff /1st respondent would further contend that even in the plaint, they have contended that Moves have been entered into between the 2nd defendant and the plaintiff and

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money was also exchanged between them. Therefore, this application is not maintainable. After a detailed enquiry, the learned II Additional City Civil Judge, by order dated 19.07.2017 dismissed the said application. Challenging the same, this civil revision petition has been filed.

3.The Court below has observed that the plaintiff has claimed the relief as against all the three defendants and the liability was binding on all the defendants, jointly and severally and the defendants could not rely upon certain portions of the affidavit to move the above application. That apart, there is a privity of contract between the plaintiff with these defendants and therefore, the application cannot be entertained.

4. There is no representation for the respondents.

5. The learned counsel appeared for the petitioners has contended that the very reference of the 1st plaintiff to the 1st defendant as their Agent would clearly come within the ambit of provisions of Section 233 of the Indian Contract Act and therefore the suit should be dismissed against them.

6. The revision petitioners are seeking to take advantage of this

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simple statement in order to get over the Decree that may ultimately be passed against them by invoking the provisions of Order 12 Rule 6 of the Code of Civil Procedure for a stray statement.

7. On a total reading of the plaint, it is seen that the 2nd defendant has entered into a contract with the plaintiff and amounts have also been paid to the 2nd defendant . In these circumstances, the 2nd defendant cannot take a plea that he is an agent and he only acted as an agent and the petitioners as the principal agent cannot be mulcted with any liability. Having received payments from the plaintiff, it is for the revision petitioners to prove during the trial that the money had not changed hands. As such, the impugned order, under 12 Rule 6 of the Code of Civil Procedure warrants no interference. The learned Judge has rightly dismissed the said application. I do not find any infirmity in the impugned order passed. The Civil Revision Petition, is, therefore dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order
jrs

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P.T.ASHA, J.
jrs

To
1.The II Additional City Civil Court,
Chennai.

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