

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No. 552 of 2018

and

C.M.P.No.2965 of 2018

Syed Tarq Ahmed ...Petitioner/Defendant

Vs

Eusu Logistics India Pvt.Ltd.
(Earlier Known as Hanjin Logistics)
Represented by its Deputy Manager (Finance)
Mr.S.Jabaraj
Wescare Tower, Third Floor
No.16, Cenetoph Road,
Teynampet,
Chennai-18. ...Respondent/Plaintiff

This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to admit and allow this Civil Revision Petition and set aside the order dated 18.12.2017 passed in I.A.No. 181 of 2017 in O.S.No. 313 of 2017, on the file of the learned XV Additional Judge, City Civil Court at Chennai.

For Petitioner : Mr.M.Muniruddin Sheriff
For Respondent : Mr.C.Selvekumar

ORDER

The above Civil Revision Petition is filed challenging the order passed in the I.A.No. 181 of 2017 in O.S.No. 313 of 2017, in and by which, the learned XV Additional Judge, City Civil Court, Chennai, has rejected the application filed by the revision

petitioner/defendant seeking leave to defend the suit instituted of the respondent/plaintiff herein.

2 The brief narration of facts which are necessary to dispose of the above Civil Revision Petition are as follows:

The respondent/plaintiff had filed the suit O.S.No. 313 of 2017, claiming a sum of Rs. 13,64,649/-, together with interest at the rate of 18% per annum, for the requisite work that they had undertaken on behalf of the defendant. The respondent on receipt of the summons had filed the application for leave to defend and the triable issue put forward by the revision petitioner/defendant is that the respondent/plaintiff had not furnished them with copies of ARE-2 and EP copies, as a result of which, the petitioner/defendant had incurred heavy loss. The revision petitioner/defendant in his reply notice dated 17.10.2016 had claimed a sum of Rs. 15,00,000/-, for the alleged damages/deficiency of service on the part of the plaintiff. In reply to the pre-suit notice, the defendant had specifically stated that the documents released to the shipment had not been handed over to him for filing with the Bank, as per the general practice of trade, this statement was denied by the plaintiff who would state that these papers would be handed over only after payment. In the leave to defend petition, the defendant would say that as per the practice immediately after export, the Clearing and Forwarding Agency has to

hand over all the documents to the party and only thereafter payments were to be effected. This by itself, is a triable issue. The learned XV Additional Judge, City Civil Court, Chennai, has dismissed the above application stating that the plaintiff has valid cause of action to file the suit and the invoice would further give them a right to claim interest. Therefore, the Court was of the considered opinion that the leave to defend application had to be dismissed. The learned Judge has not referred to the defence that has been put forward by the defendant herein and challenging this order that the revision petitioner/defendant is before this Court.

3 Heard the counsel on either side.

4 As already observed from facts narrated hereinafter the issue as to whether ARE-2 and EP copies had to be handed over on payment or thereafter, is by itself triable issue since if it is found that if the said forms have to be first given to the parties, then the defendant shall be entitled to claim damages.

5 In the result, the Civil Revision Petition stands allowed and the order passed in I.A.No. 181 of 2017 in O.S.No. 313 of 2017, by learned XV Additional Judge City Civil Court, Chennai, dated 18.12.2017 is therefore set aside. It is informed that the

P.T.ASHA, J.

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revision petitioner/defendant has already filed his written statement and the suit having been filed in the year 2017, the learned XV Additional Judge, City Civil Court, Chennai is directed to dispose of suit on or before 31.08.2019. No costs. Consequently, connected miscellaneous petitions is also closed.

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Index: Yes/No
 Internet: Yes/No
 Speaking order / Non-speaking order

To

The XV Additional Judge,
 City Civil Court,
 Chennai.

09.04.2019

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