

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

DELIVERED ON : .04.2019

CORAM:

THE HONOURABLE MR.JUSTICE C. SARAVANAN

C.R.P.(NPD) No.163 of 2014 and
M.P(MD).Nos.1 and 2 of 2014

M/s.Grace Literature Company,
Rep.by its Sole Proprietor-cum-authorized
Signatory, P.N.K.Nagarajan, Christian, .. Petitioner

vs.

M/s.UBS Publishers Distributors (P) Ltd.,
Rep.by its Regional Manager,
Mr.S.Viswanathan,
No.60, Nelson Manickam Road,
Aminjikarai, Chennai 600 029. .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.08.2012 passed in I.A.No.6311 of 2012 in O.S.No.607 of 2012 on the file of XIII Asst. Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Kannan

For Respondent : No Appearance
ORDER

The present Civil Revision Petition is directed against order dated 13.8.2012 in I.A.No.6311 of 2012 in O.S.No.607 of 2012 passed by the 13th Asst City Civil Judge, Chennai.

2. By the impugned order, the court below has declined to grant leave to defend the above suit to the petitioner.

3. The respondent had filed above summary suit against the petitioner to recover a sum of Rs.6,07,056/-. The summary suit is based on confirmation of balance by the petitioner after the cheque issued towards the alleged outstanding of Rs.3,69,000/- was dishonoured by the petitioner and the said cheque was returned with a bank memo indicating "insufficient funds" as on 5.11.2011.

4. The respondent issued a legal notice dated 11.11.2011 to the petitioner and called upon the petitioner to pay a sum of Rs.3,69,000/-. The respondent however did not pursue with the remedy available to it under the provisions of the Negotiable Instruments Act, 1989. Instead, the above Suit was filed after issuing the above mentioned legal notice dated 11.11.2011.

5. Immediately after the suit summons was served, the petitioner filed I.A.No.6311 of 2012 and sought for leave to defend. In the said application the petitioner has denied issuing cheque dated 18.6.2011 and has specifically stated that the handwriting in the cheque was not that of his. The petitioner has further stated that the summons filed under order 37 rule 3 was not in the prescribed form and was not supported by any affidavit verifying the cause of action for the claim under Order 37 Rule 4 of CPC. The respondent filed a detailed counter and stated that the petitioner was not entitled to leave under Order 37 Rule 3 (v) of CPC.

6. The court after examining the records has concluded that the petitioner has admitted to the claim in the endorsement in Exhibit R-9 dated 18.5.2011 and that the petitioner has not come with clean hands while seeking leave to defend and that it was meant to prolong the litigation by raising untenable and frivolous defences.

7. Heard learned counsel for the petitioner and the respondent and perused the materials available on records.

8. Learned counsel for the petitioner relied upon the decision of the court rendered in the following cases: -

(i) Central Bank of India Vs Ravindra and

others reported in 2002 (1) SCC 367

(ii) G.Baktavatchalam & Co Vs C.Abdul Rahman & Co reported in 2016 (3) CTC 1

(iii) S.Babu Vs M/s.J.K.Industries Limited, Madurai reported in 2008 (3) L.W.609

iv) Sunil Enterprises and another vs SBI COMMERCIAL & INTERNATIONAL BANK LTD 1998(5) SCC 354

v) Rajesh bansal vs. M/s. Ansal Housin Construction Ltd., (2002 (3) R.C.r. (Civil 811

vi) vidyasagar Proprietor Winstar shipping Services vs. Everest India Pvt.Ltd. And another 2013(6) Ctc 332

vii) S.Balasubramanian vs. V.Govindan 2013(5) CTC 260

viii) Defiance Knitting Industries (P) Ltd. vs. Jay Arts (2006) 8 Scc 25

ix) Satti Paradesi Samadhi and Phillar Temple vs M.Sankuntala (D) Tr.Lrs.and others 2015 (5) SCC 674

9. Leaving aside the above decision it may be useful to refer to the decision of the Honourable Supreme Court in **Defiance Knitting and Industries Private Ltd Versus Jay Arts** (2006) 8 SCC 25. In para-13 and 14 after referring to the entire gamut of case laws on the subject of summary suit under Order 37 rule 1 of CPC the court held as under:-

“13. While giving leave to defend the suit the court shall observe the following principles:

(a) If the court is of the opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. See *Milkhiram (India) (P) Ltd.v. Chamanlal Bros.* [AIR 1965 SC 1698 : 68 Bom LR 36] The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavits of parties.

(b) If the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious it may refuse leave to defend altogether. *Kiranmoyee Dassi v. Dr. J. Chatterjee* [AIR 1949 Cal 479 : 49 CWN 246] (noted and approved in *Mechelec case* [(1976) 4 SCC 687 : AIR 1977 SC 577]).

(c) In cases where the court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the court may impose conditions in granting leave to defend.

14. In *Raj Duggal v. Ramesh Kumar Bansal* [1991 Supp (1) SCC 191 : AIR 1990 SC 2218] it was held as follows: (SCC pp. 191-92, para 3)

“3. Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be denied. Where also, the

defendant shows that even on a fair probability he has a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.”

10. From the records it is evident that the court has later decreed the suit after rejecting the leave to defend vide impugned order dated 13.8.2012. It is noticed that the respondent was a publisher of textbooks and was allowing credit sale to the petitioner.

11. By Ex.R.9 dated 18.5.201 the petitioner acknowledged that a sum of Rs.3,79,006/- was due and payable to the respondent. Ex.P.2-Cheque was for Rs.3,69,006/- dated 18.6.2011. It was presented by the respondent for clearance with their bankers. It was later returned by the bankers vide Ex.R.5 memo with an endorsement “insufficient funds” .

12. Ex.R.6 is the legal notice dated 11.11.2011 issued on behalf of the respondent to the petitioner and calls upon the petitioner to pay a sum of Rs.3,69,000/-.

13. The respondent has not initiated proceedings under the provisions of the Negotiable Instruments Act, 188. Instead the respondent initiated the above mentioned suit under Order 37 Rule 1 of CPC. to recover a sum of Rs.6,07,056/- though as per Ex.R.9 dated 18.05.2011, the amount due was only Rs.3,69,006/-

14. In my view, the petitioner has made out a *prima facie* case as the alleged confirmation of due vide Ex.R.9 is only Rs.3, 69,006/- whereas the suit has been filed for a sum of Rs.6,07,056/-. *Prima facie* the arithmetic based on the documents and the averments in the plaint do not make out a case for being decreed in a summary manner under Order 37 of C.P.C.

15. Consequently, I am of the view the court below erred in dismissing application for grant of leave to defend. In my view, the impugned order has resulted in gross injustice as the petitioner has a triable case to defend himself in the aforesaid suit.

16. In view of the above observation, I am of the view that the impugned order passed by the XIII Asst. City Civil Court, Chennai is liable to be set aside and the civil revision petition is allowed.

17. Consequently, the petitioner shall file written statement within a period of 30 days of receipt of this order before the XIII Asst.City Civil Court, Chennai.

18. If the petitioner files his written statement within such time before the XIII Asst City Civil Court, Chennai it shall frame issues and proceed with trial to pass a Judgment and decree on merits.

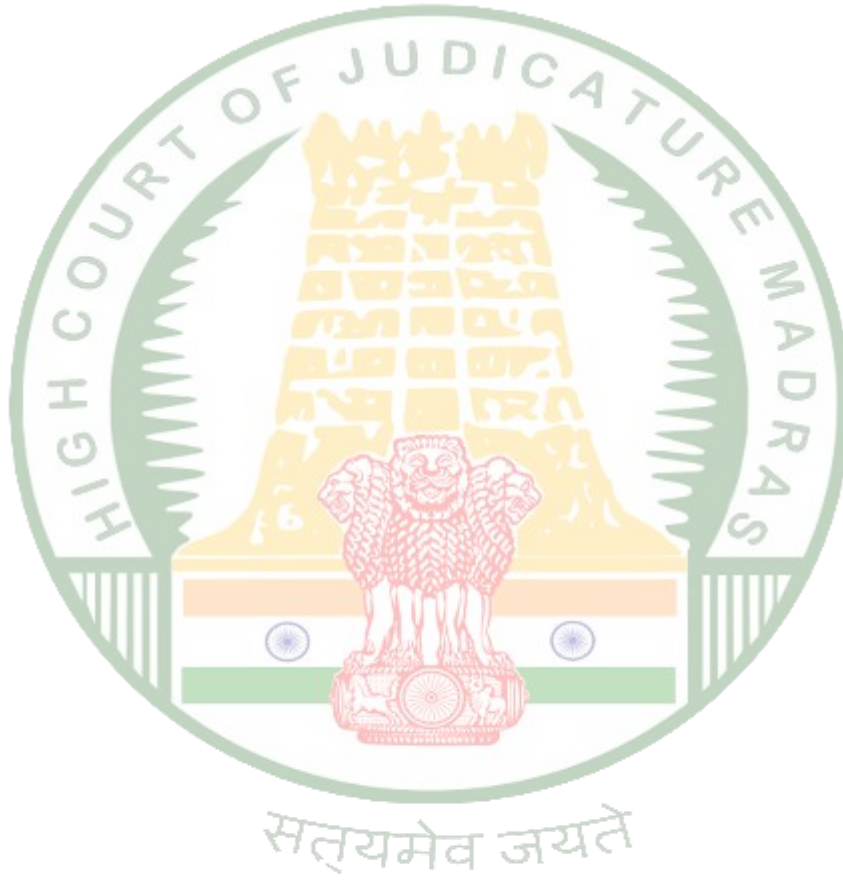
19. Since the suit is of the year 2012, the XIII Asst Judge, City Civil Court, Chennai shall endeavour to complete the above exercise within a period of six months from the date of receipt of this order.

20. The present Civil Revision Petition stands allowed with the above observation. Consequently connected miscellaneous petitions are closed. No cost.

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Index : Yes/No
Internet: Yes/No
Speaking : Non Speaking order
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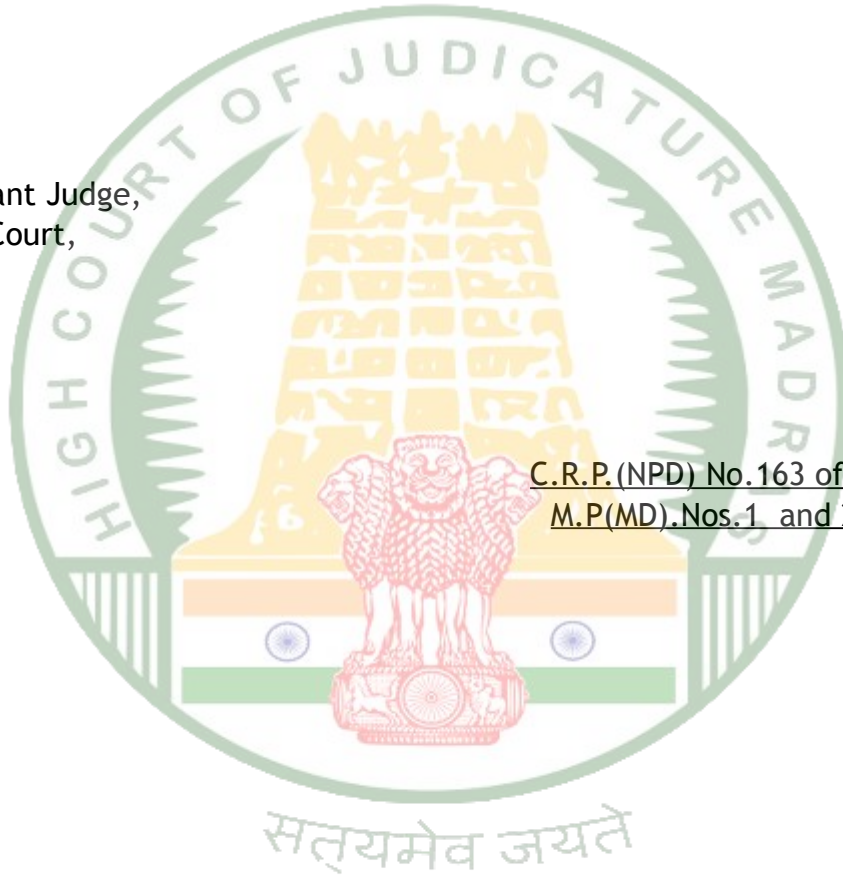
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C.SARAVANAN,J.

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To

XIII Assistant Judge,
City Civil Court,
Chennai.



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