

A.No.5848 of 2019
in
C.S.No.152 of 2019

N.Sathish Kumar, J.

This application has been filed seeking leave to defend the suit filed under Order XIV Rule 8 of O.S. Rules read with Order XXXVII Rule 3(5) of Civil Procedure Code.

2. The main contention of the applicant is that the plaint documents are fabricated and reconciliation statement dated 27.11.2014 is signed by a person who is not an authorised signatory of the defendants' company. Similarly the cheques referred in the suit are of the year 2012 and not of the year 2016 and there are triable issues involved in the suit. Hence, they may be permitted to defend the suit.

3. The learned counsel for the respondent/plaintiff filed counter denying the allegations in the application. It is the contention of the respondent/plaintiff that the application filed seeking leave is barred by limitation. Summons were served on the defendants on 01.04.2019. Whereas this application for leave to defend the suit has been filed beyond the period of 10 days prescribed under the Act. It is also denied that the documents were not signed by the person who is not authorised by the

defendants. Therefore, it is his contention that there is no substantial defence for the defendants. Hence, prayed for dismissal of this application and to decree the suit.

4. This suit has been filed for recovery of a sum of Rs.3,28,97,080/- The above amount is payable by the defendants towards supply of goods as per sale invoices commencing from the second half of 2013 till the first half of 2014. It is the case of the plaintiff that they are in the business of undertaking mining and infrastructure contracts from various Government and private organizations. In the above business they have supplied tyres, leaf springs, axle Assembly etc. to the defendants. The defendants have confirmed the accounts of reconciliation-cum-confirmation of balance statement dated 27.11.2014. Wherein they have specifically confirmed the balance due payable to the plaintiff. Even thereafter, towards the outstanding balance, they have issued 6 cheques, out of which 3 cheques were drawn on Karnataka Bank 3 cheques were drawn on ICICI Bank totally for a sum of Rs.1,77,24,284/-. The above cheques were dishonoured. The suit has been filed within the period of limitation from the date of reconciliation statement.

5. It is well settled that on summons being served under Order 37, the defendant has to apply before this Court within 10 days seeking leave. Admittedly, the suit summons were served on the defendantd on 01.04.2019.

But this application has been filed on 18.07.2017 beyond the period of limitation. Be that as it may.

6. In the entire application, there is no sufficient reasons whatsoever in the application to condone the delay and without any explanation for such delay, this Court cannot extend the benefit to the defendants by condoning the delay without any materials. Article 118 of the Limitation Act clearly stipulates that the period in which the application seeking leave has to be filed. Admittedly, this application has been filed only after a huge delay.

7. As far as merits is concerned, the suit has been laid mainly on the basis of reconciliation cum confirmation of accounts by the defendants dated 27.11.2014 and not stopping with that, subsequent to the confirmation of accounts, 6 cheques have been issued for various amounts totally for a sum of Rs.1,17,24,284/-. The above cheques also got dishonoured which resulted in initiating proceedings under the Negotiable Instruments Act under section 138 of the Negotiable Instruments Act. It is also submitted by the learned counsel that the complaint preferred under the Negotiable Instruments Act has ended in conviction and the appeal filed by the defendant has also been dismissed. These facts have not been controverted or disputed by the learned counsel for the defendants.

8. When the documents itself clearly indicate that the accounts have been confirmed and pursuant to the same some cheques have been issued and now it cannot be said that there are triable issues. Hence, this Court find that the defendants have no substantial defence to defend the suit. Since, the entire transaction is based on the accounts and the negotiable instruments have been issued by the defendant, this Court hold that there is no substantial defence for the defendant to defend the suit and the leave sought by the defendant cannot be granted. Moreover, this application has been filed beyond the period of limitation and not only on limitation, but also on merits, this application is liable to be dismissed.

9. Accordingly, this application is dismissed. No cost.

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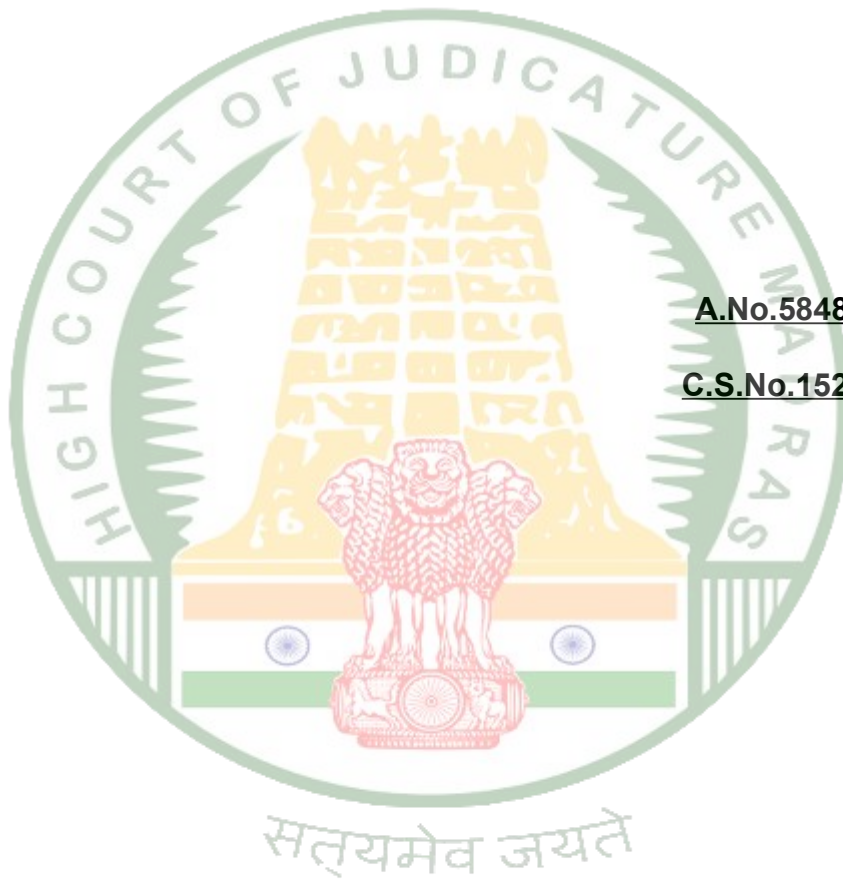
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