



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2019

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WEB COPY

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU****C.R.P (MD) No.804 of 2019 (PD)**

Sathyam Wood Industries
through its Partner
Himmath Patel,
Office at No.96/7E2, Mannachanallur Main Road,
Nochiyam, Athani,
Trichy - 621 216.

.. Petitioner/
Plaintiff

Vs.

1.Adoniss (P) Ltd.
through its Authorized Signatory,
Office at Lippo Centre,
Tower-II, 803, 8th Floor,
No.89, Queensway, Admiralty,
Hong Kong.

2.Kuehne + Nagel Pvt. Ltd.
through its Authorized Signatory,
Office at Door No.16H/1G, Palayamkottai Road,
Tuticorin 628 008.

.. Respondents/
Defendants

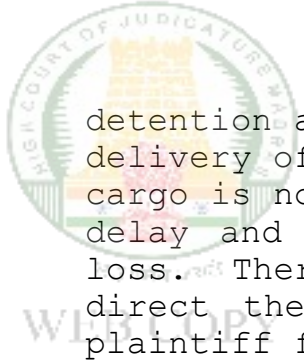
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the docket order dated 16.05.2019 and direct the learned District Judge, Tuticorin to number the Unnumbered O.S.No.- of 2019.

For petitioner : Mr.M.P.Senthil

ORDER

This civil revision petition has been filed by the petitioner / plaintiff seeking to number the plaint filed by him.

2.The learned counsel for the petitioner / plaintiff would submit that the petitioner / plaintiff is the timber merchant doing business in Trichy. The petitioner purchased wooden logs from the first respondent. The logs were loaded from Santos Port in Brazil and discharged in Tuticorin Port. The shipment arrived at Tuticorin Port on 09.02.2019. Due to continuous delay with regard to



detention and liner charges, the petitioner / plaintiff did not take delivery of the goods. Even after the payment by the plaintiff, the cargo is not yet released. The goods imported is damaged due to the delay and the petitioner / plaintiff is suffering from financial loss. Therefore, the petitioner / plaintiff filed a suit seeking to direct the respondents / defendants to pay Rs.6,00,000/- to the plaintiff for the delayed delivery and also consequential injunction against the respondents / defendants not to collect any further claim from the petitioner / plaintiff. The petitioner / plaintiff also filed an interlocutory application under Order 39, Rule 1 and 2 of CPC seeking interim mandatory order directing the second respondent to issue the delivery order. But, the Court below, without numbering the plaint, has erroneously returned the plaint.

3.The learned counsel for the petitioner / plaintiff would further submit that the petitioner / plaintiff sought for the interim relief and he is being penalized due to internal dispute between the respondents 1 and 2. The wooden logs are now kept in Port Terminal and the delay will cause irreparable loss to the petitioner / plaintiff apart from the damages to the goods. The petitioner / plaintiff has filed an interlocutory application seeking delivery order. But, the learned District Judge without adverting to the very purport of Section 12A of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, has erroneously returned the plaint. Thus, he prayed to direct the learned District Judge to number the plaint.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.Section 12A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2015, reads as follows:

"12A.Pre-Institution Mediation and Settlement

(1)A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

... .."

6.The petitioner / plaintiff filed the suit for damages and also for consequential injunction. The petitioner / plaintiff also filed an interlocutory application seeking delivery of goods. It is seen from the plaint that the shipment was arrived at Tuticorin Port on 09.02.2019 and the goods are lying in the port for the past four months. The petitioner would state that the delay will cause irreparable loss to the petitioner / plaintiff apart from the damages to the goods. Therefore, the petitioner / plaintiff has made out a case that there is an urgency for interim relief.

7.In view of the above, this Court, without adverting to the merits of the case, is inclined to direct the learned District



Judge, Tuticorin, to number the plaint, consider the interim application if there is any real urgency in the matter and decide the same on merits and in accordance with law and if necessary refer the parties for mediation.

8.The civil revision petition is allowed on the above terms.
No costs.

9.Registry is directed to return the original plaint filed alongwith the revision, after retaining a photocopy of the same, forthwith.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Judge,
Tuticorin.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.M.P.SENTHIL, Advocate, SR.No. 67888

ORDER MADE IN
C.R.P(MD) No.804 of 2019
10.06.2019

SMN

KK/SAR/12.06.2019/3P-5C