

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.4724 of 2012 and
M.P.No.1 of 2012

M/s.Startek Shipyards Pvt. Ltd.,
Rep by its Managing Director,
No.5A, II Block, Bajaj Apartments,
No.7, Nandanam Extn, 5th Street,
Nandanam, Chennai 600 035.

... Petitioner

Vs

M/s.Raja Agency,
Rep by its Proprietor M.R.Chedilnathan,
No.1-A, Sivaraman Street,
St.Mary's Road,
Mandaveli, Chennai 600 028.

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order of the learned IV Assistant City Civil Judge, Chennai dated 25.07.2012 in I.A.No.9591 of 2012 in O.S.No.8512 of 2011 and further grant unconditional leave to defend the suit in O.S.No.8512 of 2011 on the file of Hon'ble IV Assistant City Civil Court.

For Petitioner : Mr.B.Natarajan
For Respondent : Mr.J.Kalidas

ORDER

This revision petition has been filed to set aside the order of the learned IV Assistant City Civil Judge, Chennai dated 25.07.2012 in I.A.No.9591 of 2012 in O.S.No.8512 of 2011 and further grant unconditional leave to defend the suit in O.S.No.8512 of 2011 on the file of Hon'ble IV Assistant City Civil Court.

2. The case of the petitioner is that the respondent filed the suit against the petitioner in O.S.No.8512 of 2011, on the file of the City Civil Judge at Chennai, for recovery of money under Order 37 Rule 1 of C.P.C. After issuing summons, the petitioner filed an application before the trial court under Order 37 Rule 3(5) of C.P.C., to grant leave to the petitioner/defendant to defend the suit. The said application was dismissed by the trial court. Challenging the above order passed by the trial court in the above said application, now, the petitioner/defendant is before this Court.

3. The learned counsel appearing for the petitioner would submit that first of all, the suit filed under Order 37 Rule 1 itself is not maintainable and there is a triable issue and the trial court ought to have given opportunity to

defend the suit by way of filing written statement. Therefore, without giving opportunity, the trial court straight away dismissed the application and passed the decree, is unsustainable in law.

4. The learned counsel for the respondent would submit that the suit is very much maintainable and Order 37 Rule 1(2) clearly says that any amount of recovery of debt or liquidated demand in money payable by the petitioner with or without interest, is arising out of the written contract, is very much maintainable. He also pointed out that he has marked Ex.R1 to R16 before the trial court in the said application including the credit bills and delivery challans. Therefore, it clearly shows that the cylinders were supplied and also delivered and the petitioner also accepted in the affidavit regarding the delivery of the cylinders and also they issued the cheques i.e., R11 and R15. The said cheques were returned and dishonoured for want of sufficient funds. Therefore, once they received the goods and also issued cheques they have not communicated that the supply of cylinders were not as per the requirement of the petitioner. Therefore, in the absence of that, the suit under Order 37 Rule 1 is very much maintainable. Therefore, the trial court also considered the same and dismissed the application and passed the decree.

Therefore, it does not warrants any interference of this Court.

5. Heard both sides and perused the records and admittedly, the respondent filed the suit against the petitioner under Order 37 Rule 1 in O.S.No.8512 of 2011 before the City Civil Court, Chennai. After issuing summons, the petitioner filed an application in I.A.No.9591 of 2012, to grant leave to the petitioner/defendant. Though the learned counsel for the petitioner submitted that the suit under Order 37 Rule 1 is not maintainable, such contention is not acceptable because he admitted the transaction, supply of goods and also the issuance of cheques. Therefore, the suit under Order 37 Rule 1 is very much maintainable. As far as the opportunity is concerned, though the petitioner has stated that there is a transaction between the petitioner and the respondent and however, he has stated in his affidavit in paragraph No.5 that the industrial gas supplied by the respondent was erratic, haphazard and not to the quality requirement of the petitioner company and several of the gas cylinders supplied by the respondent were semi-filled or partially-filled and did not contain gas of the required quality and content. Hence the respondent was warned that procurement of industrial gas from the respondent would be stopped, if the said situation was not rectified. Hence, it

shows that there is a triable issue in the suit and the trial court ought to have granted leave to the petitioner and the petitioner should have been given opportunity to file the written statement and after filing the same, the suit should have been disposed of in accordance with law. Without doing that, the Trial Court has straight away dismissed the application without granting leave to defend the suit. Therefore, the order passed by the trial court warrants interference of this Court.

6. The learned counsel appearing for the respondent submitted that respondent was not communicated anything regard the quality or otherwise or any deficiency of service and also without raising any objection, the petitioner company also issued the cheques and the cheques were also dishonoured. Therefore, the suit is maintainable. Though the transaction is admitted, however, the petitioner has raised triable issues. Therefore, the trial court is directed to grant leave to the petitioner and permit him to file written statement within a period of 15 days from the date of receipt of a copy of this order. After receiving the written statement, frame necessary issues and dispose of the suit in accordance with law, within a period of six months from the date of receipt of a copy of this order. The petitioner has admitted

the delivery challans. Therefore, the petitioner is directed to deposit 50% of the claimed amount before the trail Court on or before 30.09.2020, failing which, the revision stand dismissed automatically without any further reference of this Court.

7. With the above direction, the revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

13.08.2020

Index: Yes/No
Internet: Yes/No
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To

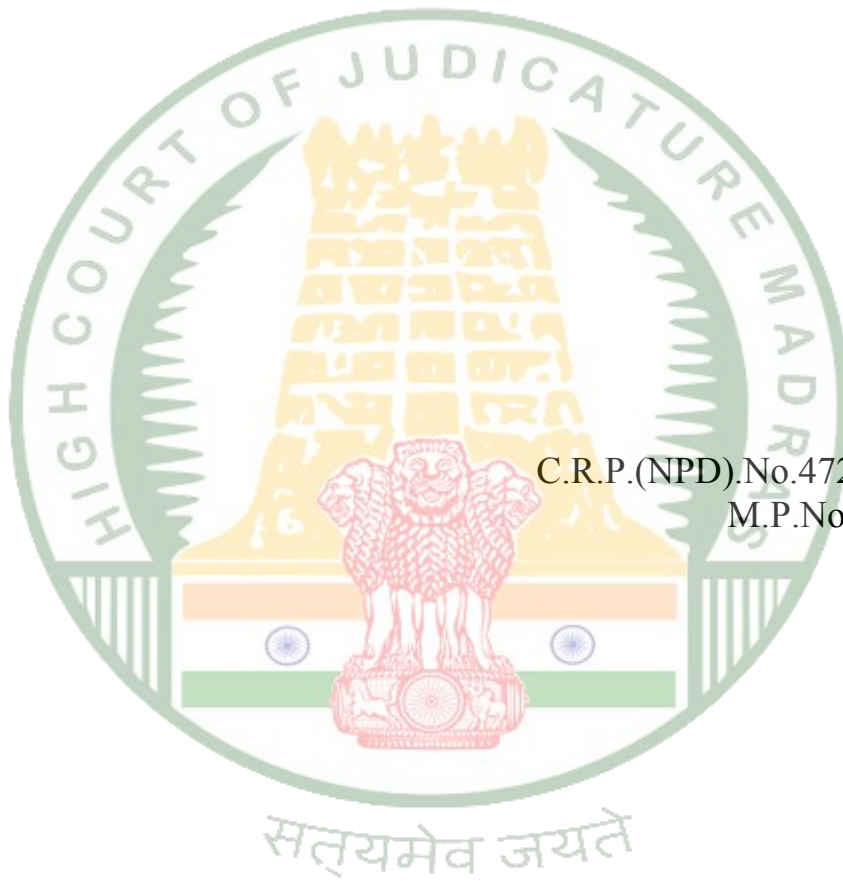
1. The IV Assistant City Civil Judge, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

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P.VELMURUGAN,J.

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