

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. (NPD) No.4093 of 2015

and

M.P.No.1 of 2015

Mr.S.Mohammed Halid
Proprietor/Authorized Signatory,
M/s.Multi Line Exporters,
No.4/28, II Main Road,
Vangeeswarar Nagar, Vadapalani,
Chennai – 600 026.

... Petitioner

Vs.

M/s.Nanooh Brothers Pvt. Ltd.,
No.165, Angappa Naicken Street,
Chennai – 600 001
Represented by its Sales Manager,
Mr.E.N.Suresh

... Respondent

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India against the judgment and decree of the VII Assistant City Civil Court, Chennai dated 10.06.2015 passed in I.A.No.4145 of 2015 in O.S.No.6881 of 2014.

For petitioner

: Mr.P.Sesubalan Raja

For respondents

: Mr.V.Bhiman
for Sampathkumar Associates

ORDER

This revision has been filed against the Order allowing the application filed by the petitioner to grant unconditional leave to defend the suit.

2. Brief facts leading to filing of this revision is as follows :

The suit has been filed by the respondent/plaintiff for recovery of a sum of Rs.1,33,643/- along with interest. The suit has been filed on the ground that, the plaintiff has supplied goods to the petitioner and there is an outstanding balance of 1,29,182/- and towards part payment of the said amount, the petitioner had issued a cheque for Rs.50,000/- and the cheque had been dishonoured. Hence, the petitioner is liable to pay the suit claim. In the above circumstances, the plaintiff had filed the suit under Order XXXVII Rule 1 of Code of Civil Procedure.

3. In the above suit, the petitioner had filed an application under Order XXXVII Rule 3(5) of Code of Civil Procedure seeking leave to defend the suit on the ground that as per the pre suit notice issued by the plaintiff, the petitioner was directed to pay only a sum of Rs.57,761/- and all of a sudden, the suit has been filed for recovery of a sum of Rs.1,29,182/-.

There is a discrepancy, and the petitioner is not liable to pay the suit claim. Hence, the petitioner filed an application seeking leave to defend the suit. But the application has been dismissed on the ground that the petitioner had not issued any reply notice to the notice sent by the plaintiff and also the cheque issued by the petitioner has been dishonoured and hence, he has no defence in the suit. Challenging the same, the present revision has been filed.

4. The learned counsel for the respondent submitted that as the petitioner has not sent any valid reply to the pre suit notice issued by the respondent, he has no valid defence in the suit. Further it is submitted that the suit notice has been issued in respect of only one invoice and there other invoices for which payment has to be made by the petitioner and hence, the respondent has filed the suit for recovery of a sum of Rs.1,29,182/- and the trial Court has rightly dismissed the application.

5. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent and perused the materials available on record carefully.

6. The suit has been filed by the plaintiff for recovery of a sum of Rs.1,29,182/- and it is a summary suit. Now the petitioner has raised

various grounds of defence including disputing the quantum payable by the petitioner. He has also relied upon the pre suit notice issued by the plaintiff and contended that his liability is much less. However, it was disputed by the respondent. Considering the fact that the petitioner has some valid defence in the suit and he cannot be prevented from contesting the suit and in the above circumstances, this Court is inclined to set aside the Order passed by the Court below.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No cost. Since, the suit is pending from the year 2014, the petitioner is directed to file written statement within two weeks from the date of receipt of a copy of this Order and thereafter, the trial Court is directed to dispose of the suit in O.S.No.6881 of 2014 within a period of six months.

vrc

10.02.2020

WEB COPY

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

The VII Assistant Judge,
City Civil Court, Chennai.



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V.BHARATHIDASAN, J.

VRC



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