

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.459 of 2018 and
CMP No.2436 of 2018

M/s.J.J.wirenetting Pvt Ltd.,
by its 1st Director
Bijoysingh Chouraria
carrying on business at
Old No.33, New No.62,
Nyniappa Naicken Street,
Park Town, II nd Floor, Chennai -03.

... Petitioner

Vs

1. GPR Estates,
Rep by its Authorised Signatory
Binny Sebastian J
2. GPR Tubes & Tabe (P) Ltd
Rep. By its Senior Engineer Sourcing
Mr.Binny Sebastian J
3. M/s.GPR Click Global (P) Ltd,
Rep. by its Assistant General Manager
Nadhamuni.

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned XV Assistant judge, City Civil Court, Chennai – 600104, dated 26.07.2017 and made in IA No.16538 of 2016 in O.S.No.4451 of 2016.

For Petitioner : Mr.H.Kishore

For Respondents :Mr.A.R.Nixon

ORDER

The plaintiff in O.S.No.4451 of 2016 has come up with this Civil Revision petition challenging an order, granting leave to the defendants to defend the suit under Order XXXVII Rule 3 of the Code of Civil Procedure.

2. The suit was laid by the plaintiff, claiming that he had supplied GI chain link, GI Concertina fencing material and high tension wires for the cost of Rs.6,58,011/- to the 1st and 2nd respondents, pursuant to the contract. At the request of the defendants 1 and 2, an invoice was raised in the name of the 3rd defendant. The 3rd defendant also issued cheques for the payment of the same. But the cheques were returned dishonoured. Hence, the plaintiff had come up with the suit after issuance of a notice.

3. The defendants 2 and 3 filed the present application in I.A.No.16538 of 2016, seeking unconditional leave to defend, contending that there is no entity described as the 1st defendant in the suit. They would also contend that there was no contract between the parties for supply of goods. A claim was also made that there was an arbitration Clause in the contract.

4. The trial Court upon consideration of the evidence, came to the conclusion that the defendant is entitled to unconditional leave to defend. On the said finding, the trial Court allowed the application. Aggrieved, the plaintiff has come up with this revision.

5. I have heard Mr.H.Kishore, learned counsel appearing for the petitioner and Mr.A.R.Nixon, learned counsel appearing for the respondents.

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6. Mr.H.Kishore, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in granting

unconditional leave to defend the suit where the defendants have not projected a plausible defence to the claim of the plaintiff. He would also point out that the defendants who have filed an application for unconditional leave to defend, would lose their right to seek reference under Section 8 of the Arbitration and Conciliation Act. I have considered the submissions of the learned counsel for the petitioner.

7. In the affidavit filed in support of the application for leave to defend, it is specifically stated that there is no entity as described as the 1st defendant in the suit. If there is no such entity, the very contract becomes doubtful. The defendants have also stated that there was no contract entered into with the plaintiff as pleaded in the plaint. In the light of such a stand as projected before the trial court, in my opinion, the trial Court was right in granting unconditional leave to defend the suit. An application under Order XXXVII Rule 3 of the Code of Civil Procedure for grant of leave has to project only a plausible defence. Unless the defence is hopeless and is a moonshine, the Court has to grant the leave to defend. Therefore, I do not think that the trial Court could be faulted for allowing the application for

leave to defend.

8. In view of the above, the Civil Revision fails and it is accordingly dismissed. The defendants are directed to file the written statement on or before **23.12.2020**. Upon such filing, the trial court is directed to dispose of the suit within a period of six months from the date of resumption of physical hearing in the Courts at Chennai. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2020

Note: Time Bound order

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Index: Yes/No

Speaking order / Non speaking order

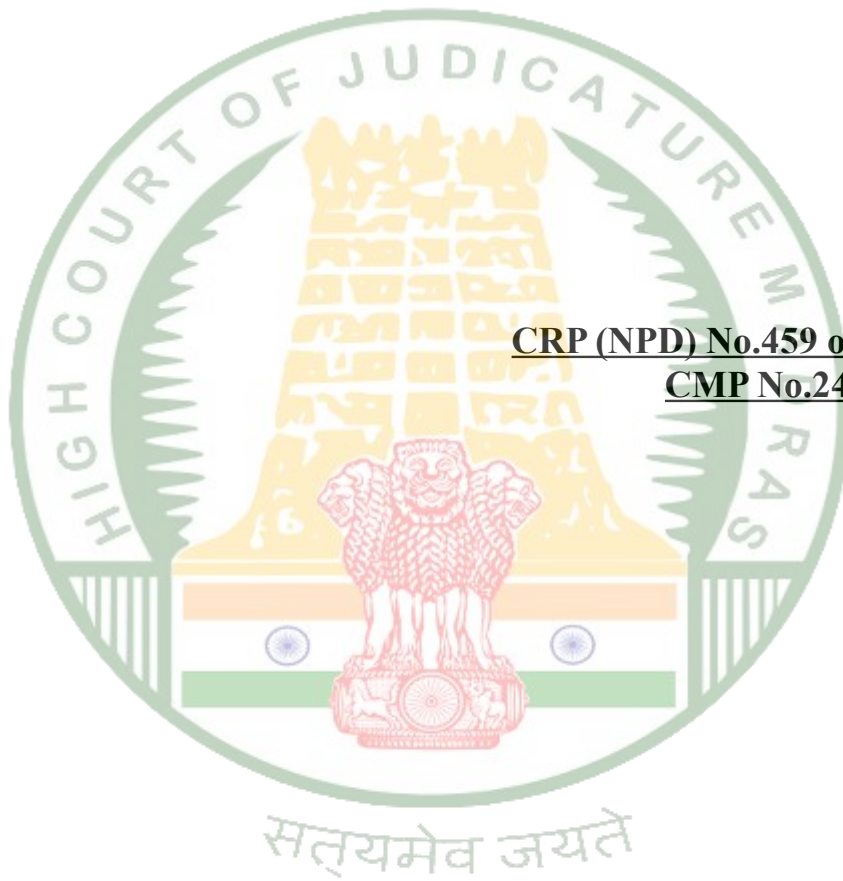
To

The XV Assistant judge, City Civil Court,
Chennai – 600104

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R.SUBRAMANIAN, J.

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