



CRP.PD.No.866/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.866/2019 & CMP.No.5640/2019

[Hybrid Mode]

Itakem Finichem P.Ltd
7B, Vuppatur Avenue,
Flowers Road
Kilpauk, Chennai-84
rep.by its Director S.Hemant Kumar

.. Petitioner

Vs.

1.M/s.A-One Leathers
1056/B-3, Konamedu,
Khaderpet Post, Vaniyambadi,
Tamil Nadu-635 751,
represented by its Partners.

2.P.Mohammed Aslam
Kaliloor Rahman [deceased]
3.P.Asif Ahmed
4.P.Shafeeq Ahmed

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket sheet order dated 07.02.2019 made in OS.No.1748/2018 on the file of the learned VI Additional Judge, City Civil Court, at Chennai.



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For Petitioner : Mr.B.Vasudevan

For RR 1 to 4 : Mr.R.Thiagarajan

ORDER

- (1) This Civil Revision Petition is directed against the docket order dated 07.02.2019 granting leave to defend the suit to the defendants in the suit in OS.No.1748/2018 by the learned VI Additional Judge, City Civil Court, Chennai.
- (2) The revision petitioner herein as plaintiff, filed a summary suit in OS.No.1748/2018 under Order 37 Rule 1 and 2 CPC in OS.No.1748/2018 before the learned VI Additional Judge, City Civil Court, Chennai.
- (3) The said suit is for recovery of a sum of Rs.25 lakhs with interest. The suit is based on the supply of chemicals based on the Purchase Orders received from the respondents / defendants through phone calls. It is stated that a sum of Rs.19,17,445/- with interest from 02.07.2016 is due from the defendants towards supply of chemicals.



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(4) After filing of the suit, the defendants in the suit filed an Interlocutory Applications to grant unconditional leave to them to defend the suit by filing a detailed written statement. In the affidavit filed in support of the petition to leave to defend, it was pointed out that none of the cause of action as pleaded in the plaint, arose within the jurisdiction of Chennai and therefore, the suit itself is filed in a Court which has no territorial jurisdiction. It was further alleged that there was subsequent negotiation between the parties and that towards loss suffered by the defendants because of the defective products supplied by the plaintiff, there was an adjustment and the parties had settled the issues accordingly by arriving at a sum to be payable by the defendants to the plaintiff. It is further stated that the said sum was also paid and the issue was closed. It was further stated in the affidavit that the suit itself cannot be brought under the ambit of Order 37 Rule 1 and 2 CPC and that, it cannot be presumed that the Statement of Accounts furnished by the plaintiff is true and genuine in the absence of invoice supported by delivery notes. There were other issues



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- (5) When the application to leave to defend was pending, there were petitions filed by the plaintiff. The 3rd defendant in the suit died and steps were taken to bring on record the legal heirs of the deceased/3rd defendant. Based on the Memo filed by the defendants in the suit, it is admitted that some corrections were also carried out in the suit by way of amendment and since the plaint itself was amended, the suit was posted on 07.02.2019 for clarification and a query was raised as to whether the suit should be converted as a normal suit, i.e., from Order 37 CPC to Order 7 CPC?
- (6) A Memo was filed clarifying the position by the revision petitioner/plaintiff. However, the Lower Court, vide order dated 07.02.2019, observed that the present suit lost its characteristics as one filed under Order 37 CPC as the defendants have lost their right to file a petition seeking to leave to defend the suit. It is observed that the suit should be deemed to be one filed under Order 7 CPC and the defendants are entitled to a copy of the



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amended plaint to file their written statement. This order is challenged before this Court in the present Civil Revision Petition.

- (7) The learned counsel for the petitioner submitted that the order of the Court below is erroneous, untenable on facts and inconsistent with the materials on record. It was pointed out that the corrections that were made in the plaint are regarding the names and addresses of the defendants/respondents and that the character of the suit cannot be taken as different because of the amendments. The learned counsel also submitted that the special procedure under Order 37 CPC is applicable to the suit and that the suit cannot be converted to a normal suit without considering the merits of the case. In other words, it is contended that the Lower Court, on the basis of the amendment of plaint, has erroneously held that the suit should be converted as a normal suit. The crux of the arguments is that the suit is maintainable under Order 37 CPC and that in any case, the maintainability of suit under Order 37 CPC can be decided only in the petition filed by the defendants to leave to defend and not in a summary manner as it has been done by the



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Lower Court. It is contended that since the amendments are only to correct the clerical mistakes, the Court has misdirected itself to decide the character of the suit.

- (8) First of all, this Court has to examine whether the suit falls under Order 37 CPC.
- (9) Order 37 Rule 1 and 2 CPC reads as follows:-

Order XXXVII-Summary Procedure

1. Courts and Classes of suits to which the orders is to apply-

1) This order shall apply to the following courts, namely-

- (a) High Courts, City Civil Courts and Courts of Small Causes ; and*
- (b) Other Courts;*

Provided that in respect of the Courts referred to in clause [b], the High Court may, by notification in the Official Gazette , restrict the operation of this order only to such categories of suits as it deems proper and may also, from time to time, as the circumstances of the case may require, by subsequent notification to the official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation



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of this order as it deems proper.

2) Subject to the provisions of sub-rule [1], the order applies to the following classes of suits, namely-

[a] suit upon bills of exchange, hundies and promissory notes;

[b] suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-

[i] on a written contract ; or

[ii] on an enactment ; where the sum sought to be recovered is affixed sum of money or in the nature of a debt other than a penalty ; or

[iii] on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

2. Institution of Summary suits-

(1) A suit, to which this order applies may, if the plaintiff desires to proceed hereunder be instituted by presenting a plaint which shall contain-

[a] a specific averment to the effect that the suit



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is filed under this order ;

[b]that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint ; and

[c]the following inscription, immediately below the number of the suit in the title of the suit, namely under Order XXXVII of the Code of Civil Procedure, 1908.

(2) The summons of the suit shall be in form No.4 Appendix B or in such other Format from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule [1], unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.



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- (10) The learned counsel for the petitioner submitted that the suit is based on the invoices raised from the goods supplied to the defendants by the plaintiff. Learned counsel for the petitioner relief on a catena of decisions for the proposition that purchasing goods by bills on credit basis amounts to a written contract and therefore, the suit must be treated as one filed under Order 37 CPC. The learned counsel for the petitioner himself during the arguments, submitted that the character of the suit, whether it can be maintained under Order 37 CPC ought to have been decided in the application filed by the defendants to grant leave to defend.
- (11) This Court also carefully gone through the affidavit filed by the respondents/defendants before the Court below in support of their application to leave to defend and the counter filed by revision petitioner apart from the dates and events.
- (12) The respondents/defendants have raised an issue regarding territorial jurisdiction of the Court in which the suit is filed. Apart from that, the adjustment pleaded by the respondents/defendants and other factual issues raised by the defendants/respondents



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cannot be ignored. From the nature of defence that is taken, this Court is also of the view that the suit though is filed under Order 37 CPC, may be converted as a regular suit under Order 7 CPC in the interest of justice. Under Order 37 Rule 4 CPC, the Court has power even to set aside the decree and grant leave to defend the suit. This is a fit case in which leave to defend should be granted.

(13) Having regard to the observations of this Court made in the earlier paragraphs with regard to the issues raised by defendants, this Court has no hesitation to hold that the suit can be tried as a regular suit. In view of the facts and pleadings admitted, this Court is of the view that the order of the Lower Court need not be disturbed.

(14) In the result, the Civil Revision Petition is **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

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AP
Internet : Yes

To



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VI Additional Judge,
City Civil Court, Chennai.



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S.S.SUNDAR, J.,

AP

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