

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2021

CORAM

THE HON-BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.1059 and 1155 of 2019 and
C.M.P.Nos.6972 and 7432 of 2019

M/s VGC Bags

Represented by its Prop. Rani Baskar
No.1/50 H, JJ Nagar, East Colony,
Reddiyarpatti,
Pallayamkottai

... Petitioner in both the petitions/
Petitioner/Defendant

Vs.

M/s Sinecera Import and Export Pvt., Ltd.,
rep. by its General manager
Having Office at 111A, 2nd Floor,
Mount View Building,
Guindy,
Chennai - 32

... Respondent in C.R.P.No.1059 of 2019/
Respondent/Plaintiff

M/s Sinecera Textiles Pvt., Ltd.,
rep. by its General manager
Having Office at 111A, 2nd Floor,
Mount View Building,
Guindy,
Chennai - 32

... Respondent in C.R.P.No.1155 of 2019
/Respondent/Plaintiff

Civil Revision Petitions are filed under Section 115 of Civil Procedure Code to set aside the order dated 18.01.2019 passed in I.A.Nos.2432 and 2433 of 2017 in O.S.Nos.6173 and 6174 of 2017 on the file of learned VI Assistant Judge, City Civil Court, Chennai respectively.

For Petitioner : Ms.P.Meghana Nair

For Respondents : Mr.M.Ganeshan

C O M M O N O R D E R

Since the issues involved in these Revision Petitions are one and the same, they are taken up together and a common order is being passed.

2. These Civil Revision Petitions have been filed against the order passed in I.A.Nos. 2433 and 2432 of 2017 in O.S.Nos.6174 and 6173 of 2017 on the file of VI Assistant Judge, City Civil Court, Chennai dated 18.01.2019 by raising various grounds.

3. The case of the petitioner / defendant is that the suit in O.S.No.6173 of 2017 is filed by the respondent / plaintiff for passing a Judgment and decree against the petitioner / defendant to pay a sum of Rs.1,39,298/- with 21% interest per annum on Rs.1,08,702/- from the date of plaint till the date of realisation; another suit in O.S.No.6174 of 2017 is also filed by the respondent / plaintiff for passing a Judgment and decree against the petitioner / defendant to pay a sum of Rs.6,36,075/~ along with 21% per annum on Rs.1,19,792/- from the date of the plaint till the date of the realisation. The petitioner / defendant had filed I.A.Nos.2432 and 2433 of 2017 denying all the averments stated in the suits, which were filed under Order 37 Rule 2[A] of CPC r/w Order VII Rule 1 of CPC. The petitioner / defendant was engaged in production of high quality GSM shopping bags made of NOLWOVELL cloth and the defendant had several years reputation in the said business and the respondents / plaintiffs used to supply cloth materials for stitching those bags and accordingly, there were commercial business transaction with the respondents / plaintiffs.

4. It is the further case of the petitioner / defendant that last batch of cloth supplied by the respondents / plaintiffs was of inferior quality, which lead to the rejection of bags supplied by the petitioner / defendant to the customers causing heavy loss to the defendant. Further, he submitted that on 16.06.2015, the defendant had purchased machines for stitching the said shopping bags from the respondents/ plaintiff-s sister concern, namely, M/s Sinicera Import and Export Pvt., Ltd., for a sum of Rs.7,96,950/- and he has taken the same as loan. The

said sister concern, did not initiate any steps for installing the same in the petitioner / defendant-s premises, nor they guided the defendant with the know-how and other materials in order to put the machines for use, as it is the duty of the respondent / plaintiff-s sister concern to install the same.

5. In consequence, the petitioner / defendant had made several oral request to the respondents / plaintiffs, but they have not taken any initiative to set up the said machines, as a result, the said machines are still lying idle in the petitioner-s / defendant-s premises. The cloth material supplied by the respondents / plaintiffs were of lower quality and due to the financial crunch, and the loan taken by the petitioner / defendant could not be paid for purchasing the machines. The defendant took two years to recover from the debt and the plaintiffs has been informed about the said issue. In the meanwhile, the plaintiff-s sister concern had filed suits before this Court in O.S.No.6173 of 2017 and O.S.No.6174 of 2017 and in both the suits, the value claim works out to Rs.7,55,868/- which is almost the value of the machine supplied to the petitioner on 16.06.2015. The respondents / plaintiffs are aware of the same and for the notice sent by the plaintiffs, the defendant had informed all the aforesaid averments. As the petitioner / defendant has a valid counter claim against the respondents/plaintiffs, the defendant had filed the above said I.As seeking leave of the said trial court to defend the suits.

6. In contrary, counter affidavits were filed by the respondents /plaintiffs who had submitted that the said petitions are not maintainable, because the petitioner / defendant had failed to show on which ground there are triable issues involved in the said suits. The petitioner / defendant admitted that they had the commercial transaction with the respondents / plaintiffs and in that regard, there was a due of Rs.7,55,868/- which was omitted to be paid by the petitioner / defendant inspite of repeated request. That apart, only after issuance of a suit notice, the respondents have filed these suits claiming a sum of Rs.7,55,868/-. The petitioner had purchased the machines on the basis of loan, but had not shown any material to the plaintiffs that they have not installed the said machines.

7. Further, the respondents/ plaintiffs denies the above stated facts and stated that the petitioner was called upon to prove that the respondents / plaintiff are aware of the same. Even when the legal notices were sent on behalf of the

plaintiffs, the statement of the petitioner / defendant that he had informed the plaintiffs are also disputed.

8. The court below after considering the rival submissions had dismissed the claim of the petitioner / defendant by observing that there is no valid material defense against the respondents / plaintiffs has been made out and the petitions were dismissed. As against the same, the present Civil Revision Petitions are filed.

9. Heard the learned counsel appearing for both the parties and perused the documents placed on record.

10. It is noted that the suits documents were based on only an Invoice No.210 dated 18.06.2015 and the same is evident from the petitioner/defendant-s side exhibit, namely, Ex.P.1. The respondents / plaintiffs have filed exhibits Ex.R1 to R4, namely, other two invoices, copy of the legal notice and copy of the statement of accounts and acknowledgment card respectively.

11. It is seen that the I.A.Nos.2432 and 2433 of 2017 have been filed under Order 37 Rule 3(5) of CPC by the petitioner / defendant seeking leave to defend the suits and the same were dismissed by the learned XIV Assistant Judge, City Civil Court, Chennai. After perusing the materials filed by either side, it is revealed from the records that the respondents/plaintiffs filed summary suits under Order 37 Rule 2(a) of CPC r/w Order VII Rule 1 of CPC seeking for recovery of Rs.6,36,075/- along with 21% per annum on Rs.1,19,792/- and recovery of Rs.1,39,298/- along with 21% per annum on Rs.1,08,702/- being a commercial transactions between the respondents / plaintiffs and the petitioner / defendant herein. The facts are that on account of supply of certain goods by the respondents / plaintiffs to the petitioner / defendant and the petitioner / defendant having failed to repay the values for the goods supplied, the respondents have preferred the suits. By way of above said Interlocutory Applications, the petitioner / defendant have approached the trial court seeking leave to defend the suits.

12. On the perusal of the entire documents placed on record, it is clear that the suits being summary suits, the petitioner / defendant has invoked Order XXXVII Rule 3(5) of CPC seeking leave to defend the suit on the basis that the respondents / plaintiffs had supplied inferior quality cloth and defective machines to petitioner / defendant, due to which the machines

were not installed and the respondents / plaintiffs did not even assist the petitioner in installing the same, thereby resulting in heavy loss to the petitioner for having kept the machines lying idle and not put for use till date.

13. Further, the petitioner-s case is that it took two long years for him to recover from the loss incurred due to the supply of inferior quality cloth and due to which, it was not sold. The respondents / plaintiffs have not guided the petitioner / defendant for running the machines and if the machines are put to use, there would not have been any loss to the petitioner / defendant, stating these reasons, petitioner / defendant have filed applications seeking leave to defend the suit and apart from this, the petitioner has not chosen to state any valid reason seeking leave to defend the summary suit initiated by the respondents / plaintiffs.

14. In a summary suit, the onus is on the petitioner / defendant to plead valid and sufficient reasons either by way of disputing the claim with proper proof or even plead that they are not liable to pay the entire amount or part of the amount disputing the prayers sought in the summary suit.

15. As far as the present cases are concerned, it is clear from the affidavits filed in support of the petitions seeking leave to defend, the petitioner / defendant has neither disputed the claim nor placed any material facts before the the trial court to permit the petitioner / defendant to defend the summary suit. The trial court has rightly dismissed the petitions filed by the petitioner / defendant for not disclosing any valid reason in support to defend the summary suit filed by the respondents / plaintiffs. Unless and until there is any dispute raised as against the claims made in summary suits, the petitions seeking leave to defend the suit cannot be allowed. Moreover, merely blaming the plaintiffs in the summary suits without any substantial proof or even denying the claim made by the plaintiffs, the leave to defend the petitions cannot be sustained at all.

16. From the above it is clear that the petitioner / defendant has not denied that he is liable to pay any such amount as claimed by the respondents / plaintiffs in the affidavits filed in support of the petitions seeking for leave to defend the suit. A mere filing of invoices and account statements without any valid substantial proof will not be sufficient to allow the leave to defend petitions.

17. From the above facts and circumstances, this Court does not find any infirmity in the orders passed by the trial court in I.A.Nos.2432 and 2433 of 2017 dated 18.01.2019 in dismissing the leave to defend petitions filed by the petitioner / defendant. Hence both the Civil Revision Petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

The XVI Assistant Judge,
In charge of VI Assistant Judge,
City Civil Court,
Chennai.

+2cc to M/s.Mr.P.Magna Naier, Advocate, SR Nos.6387 & 6388.

C.R.P.Nos.1059 and 1155 of 2019
and
C.M.P.Nos.6972 and 7432 of 2019

PVS (CO)
CSR 19.0.2021