



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY THE 8TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.1414 and 3149 of 2021
in
C.S(Comm.Div.)No.128 of 2021

(*) Aavanor Systems LLP
Represented by its Partner,
Mr.M.Vennimalai
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

(*) Amended as per order dated 21.12.2021
in A.No.3148/2021 in
C.S(Comm.Div) No.128 of 2021

: Plaintiff

Vs.

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Defendant

A.No.1414 of 2021

Aavanor Systems Private Limited
Represented by its Managing Director
Mr.M.Vennimalai
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

: Applicant/Plaintiff

Vs.

PERS Enterprises Private Limited,



No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Respondent/Defendant

Application praying that this Hon'ble Court be pleased to direct

the Respondent/Defendant to furnish security to the tune of Rs.1,04,52,423/-
(Rupees One Crore Four Lakhs Fifty-Two Thousand Four Hundred and
Twenty Three Rupees only) as in the event the Respondent/Defendant fails
to furnish security in respect of the aforesaid amount, this Hon'ble Court
may be pleased to attach the schedule mentioned properties of the
Respondent/Defendant.

A.No.3149 of 2021

Aavanor Systems LLP
(Formerly known as Aavanor Systems Private Limited)
Represented by its
Partner Mr.M.Vennimalai
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

: Applicant/Plaintiff

Vs.

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Respondent/Defendant

Application praying that this Hon'ble Court be pleased to issue a
summary judgment in respect of the suit claim as prayed for in paragraph 35
of the Plaint.

These applications coming on this day before this court for
hearing in the presence of Mr.H.Karthik Seshadri for M/s. Iyer and Thomas,
Advocates for the Applicant in both applications, and Mr.Satish Parasaran,



Senior Counsel for M/s.Vijayan Subramanian, Advocates for the respondent in both applications and upon reading the judges summons and the affidavit of M.Vennimalai, filed in A.No.3149 of 2021 and the order dated 30.06.2021 made in A.No.1414 of 2021 and the order dated 12.08.2021 made in A.Nos.2640 & 2641 of 2021 in C.S.No.128 of 2021 and this Court observing that the Plaintiff asserts that services were provided as per the Defendant's requirements, and that the Plaintiff is entitled to the amounts claimed and the Defendant denies such assertion on the ground that the services did not meet requirements and, therefore, the Defendant is entitled to a refund and on such basis, the Defendant filed the earlier suit to recover amounts paid and in these facts and circumstances, it cannot be concluded that there is no real prospect for the Defendant to defend the suit claim and as regards Application No.1414 of 2021, pursuant to orders passed by the Division Bench, the Defendant has deposited a sum of Rs.25,00,000/- to the credit of the suit and to that extent, the suit claim of the Plaintiff has been secured. In the facts and circumstances set out above, no further orders are required in the application to provide security and both parties agree that it is appropriate that this suit be tried jointly with O.S.No.2545 of 2019., **It is ordered as follows:-**

That the A.No.3149 of 2021 be and are hereby dismissed.

2. That both parties hereto be and are hereby directed to file the



statement of admission/denial and draft issues along with a common proposed case management schedule.

3. That the suit in O.S.No.2545 of 2019 on the file of the III Additional City Civil Court, Chennai be and is hereby withdrawn from the file of the said Court and the same be and is hereby transferred to this Hon'ble Court to be tried jointly with C.S.No.128 of 2021 from the same state at which proceedings were before the City Civil Court, Chennai.

4. That both suits be posted on 22.03.2022.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 08th DAY OF MARCH 2022.

Sd./-
ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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15.03.2022

A.Nos.1414 and 3149 of 2021
in
C.S(Comm.Div.)No.128 of 2021

ORDER

DATED :08.03.2022

THE HON'BLE MR.JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 15.03.2022

APPROVED ON: 16.03.2022

Copy to:-

The Registrar,
City Civil Court,
Chennai.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY THE 8TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.1414 and 3149 of 2021

in

C.S.No.128 of 2021

(*) Aavanor Systems LLP
Represented by its Partner,
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S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

(*) Amended as per order dated 21.12.2021
in A.No.3148/2021 in
C.S(Comm.Div) No.128 of 2021

: Plaintiff

Vs.

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Defendant

A.No.1414 of 2021

Aavanor Systems Private Limited
Represented by its Managing Director
Mr.M.Vennimalai
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

: Applicant/Plaintiff

Vs.

PERS Enterprises Private Limited,



No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Respondent/Defendant

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Application praying that this Hon'ble Court be pleased to direct the Respondent/Defendant to furnish security to the tune of Rs.1,04,52,423/- (Rupees One Crore Four Lakhs Fifty-Two Thousand Four Hundred and Twenty Rupees only) as in the event the Respondent/Defendant fails to furnish security in respect of the aforesaid amount, this Hon'ble Court may be pleased to attach the schedule mentioned properties of the Respondent/Defendant.

A.No.3149 of 2021

Aavanor Systems LLP
(Formerly known as Aavanor Systems Private Limited)
Represented by its
Partner Mr.M.Vennimalai
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

: Applicant/Plaintiff

Vs.

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam, Chennai 600 033.

: Respondent/Defendant

Application praying that this Hon'ble Court be pleased to issue a summary judgment in respect of the suit claim as prayed for in paragraph 35 of the Plaint.

<https://hcservices.ecourts.gov.in/hcservices/> These applications coming on this day before this court for

hearing, The court made the following order:-



Application No.3149 of 2021 is filed for a summary judgment in terms of the relief prayed for in paragraph 35 of the plaint. Application No.1414 of 2021 is to furnish security for the suit claim of Rs.1,04,52,423/-.

2. A work order was issued to the Plaintiff by the Defendant on 18.03.2017 with regard to the provision of services, including implementation of an ERP software. Pursuant thereto, the Plaintiff undertook work and issued invoices. The admitted position is that the Defendant paid an aggregate sum of Rs.37,45,000/- to the Plaintiff towards such work but did not make payment towards subsequent invoices. Upon issuance of a lawyer's notice dated 30.04.2018, the Defendant, by reply notice dated 05.05.2018 denied liability. Proceedings were instituted by the Plaintiff before the National Company Law Tribunal, Chennai, but the said petition was rejected. The Defendant filed C.S.No.563 of 2018, which was subsequently re-numbered and transferred to the City Civil Court as O.S.No.2545 of 2019. The present applications are filed in these facts and circumstances. The written statement in this suit is already on record.

3. Learned counsel for the Plaintiff submits that there was no response from the Defendant when invoices were issued on 11.09.2017 and 13.01.2018, and that the Defendant received services from the Plaintiff without demur. On such basis, it is contended that the Defendant has no real prospect of defending the suit claim.



4. These contentions are refuted by the Defendant. The

Defendant states that it paid an aggregate sum of Rs.37,45,000/- to the Plaintiff and is not putting the software to use. Moreover, the Defendant contends that it filed the earlier suit for recovery of the sum of Rs.37,45,000/- which is pending before the City Civil Court. *Inter alia* in view of the fact that the Defendant filed the earlier suit for recovery of money paid to the Plaintiff, it is contended that it cannot be concluded that the Defendant has no real prospect of defending the suit claim.

5. In an application for summary judgment by the Plaintiff, the burden of proof is on the applicant to establish that the defence is fanciful or imaginary and that the Defendant has no real prospect of defending the suit claim. As stated earlier, the claim in the suit arises out of a transaction for the provision of services by the Plaintiff to the Defendant. The Plaintiff asserts that services were provided as per the Defendant's requirements, and that the Plaintiff is entitled to the amounts claimed. The Defendant denies such assertion on the ground that the services did not meet requirements and, therefore, the Defendant is entitled to a refund. On such basis, the Defendant filed the earlier suit to recover amounts paid. In these facts and circumstances, it cannot be concluded that there is no real prospect for the Defendant to defend the suit claim. Consequently, Application No.3149 of



6. As regards Application No.1414 of 2021, pursuant to orders passed by the Division Bench, the Defendant has deposited a sum of Rs.25,00,000/- to the credit of the suit. To that extent, the suit claim of the Plaintiff has been secured. In the facts and circumstances set out above, no further orders are required in the application to provide security.

7. Hence, Application No.3149 of 2021 is dismissed and Application No.1414 of 2021 is disposed of on the terms indicated in the preceding paragraph.

8. In view of the fact that the written statement has been filed, both parties are directed to file the statement of admission/denial and draft issues along with a common proposed case management schedule.

9. Both parties agree that it is appropriate that this suit be tried jointly with O.S.No.2545 of 2019. Accordingly, it is directed that O.S.No.2545 of 2019, which is pending before the III Additional City Civil Court, Chennai, be transferred to the file of this Court to be tried jointly with C.S.No.128 of 2021 from the same stage at which proceedings were before the City Civil Court, Chennai. List both suits on 22.03.2022.

Sd./- S.K.R.J
08.03.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.