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CRP.No.568 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.568 of 2023
and CMP.No.4596 of 2023

Sabarivasan Hardwares,
Represented by its Proprietor,
Ponsingh,
No.881/9, CTH Road, Padi,
Chennai 600 050

... Petitioner

Vs.

V.C.Impex,
Rep. by its Proprietor,
Vikash Chander Gupta,
No.142/1A, Manali Express Road,
Ernavoor, Chennai 600 054

... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC to set aside the fair and decretal order dated 13.12.2022 and made in IA.No.1 of 2022 in OS.No.71 of 2022 on the file of the Subordinate Judge, Thiruvottiyur and to allow the civil revision petition.

For Petitioner : Mr.V.C.Janardhanan
for Mr.C.Prabakaran

For Respondent : Mr.R.Sundaramurthy



CRP.No.568 of 2023

ORDER

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The revision petitioner herein is the defendant in the suit in OS.No.37 of 2021 (summary suit) on the file of the Sub Court, Ponneri. The said suit was filed by the respondent / plaintiff herein for recovery of money of Rs.3,52,364/- with interest of 24%. The defendant / petitioner herein appeared and filed objection and also filed IA.No.1 of 2021 by invoking Order 37 Rule 3(5) of CPC seeking permission to grant unconditional leave to defend the suit. The contention of the defendant is that on seeing the summon, he was surprised that the suit was initiated as summary proceedings as per Order 37 Rule 1 of CPC, summon was not in prescribed format and no copy of the document was served on him. As per the provision of law, summon must be served with the copy of the plaint, so the defendant is enable to file application seeking to grant leave to defend, which is mandatory. Further, there is no compliance of Order 37 Rule 2 of CPC, such as non service of copies of document along with summon, which is mandatory and the plaintiff has not approached the court with clean hands and the claim made by him is also false. In fact, he paid Rs.1,50,000/- both cash and through bank and he is not liable to pay as claimed in the plaint. But the plaintiff, without complying the due process of law, filed the suit by invoking summary procedure and it is not



CRP.No.568 of 2023

maintainable. As such, he prayed to grant unconditional leave to defend the above suit.

2. The said application was objected by the plaintiff stating that the reason assigned by the defendant is not maintainable. He has supplied TMT iron bars worth Rs.4,52,364/-, and to discharge the same, he gave cheques, but the same was not presented for collection as per request made by the defendant. As on date, the outstanding due is Rs.3,44,846/-. Hence, he initiated summary proceeding and it is maintainable in law. Considering both the submissions, the trial court held that the defendant not specifically pleaded that he repaid the amount to the plaintiff and specifically not mentioned the date on which he repaid the amount. Accordingly, the petition was dismissed and on the same day, the suit was decreed in favour of the plaintiff. Challenging the said findings in IA.No.1 of 2022, the defendant has preferred this revision.

3. The learned counsel for the revision petitioner argues that he repaid the amount and the plaintiff also accepted in the counter and objection, but the same was not considered by the trial judge and erroneously dismissed the application, which is unfair and the said finding is liable to be set aside.



CRP.No.568 of 2023

4. On perusal of plaint, it reveals that the plaintiff has claimed Rs.3,52,364/- as due from the defendant on supplying of TMT bars. The contention of the defendant is that he paid about Rs.1,64,000/- on two occasions and for remaining amount, he is having valid defence to defend. In the counter statement filed by the plaintiff in IA.No.1 of 2022 in paragraph 4, the plaintiff also admits that totally, a sum of Rs.1,00,000/- was paid by the defendant on 17.09.2020. So the plaintiff partly accepted the claim of the defendant. With regard to the balance amount, the defendant is having valid defence to establish that he is not liable to pay the said amount to the plaintiff and so he approached the court seeking permission to grant unconditional leave to defend the suit, but the same was denied by the trial court.

5. As above, the defendant is having valid proof to establish that he is not entitled to pay the suit claim as claimed by the plaintiff and an opportunity has to be given to the defendant, since because he is having valid defence. Hence, this civil revision petition is allowed and the application filed by him in IA.No.1 of 2022 is allowed and permission is granted. So also, the findings given by the trial judge in the summary suit directing to pay the suit claim is also set aside. Accordingly, the trial judge is directed to reopen the



CRP.No.568 of 2023

matter and permit the defendant to defend the suit and to dispose of the suit

within a period of three months from the date of receipt of this order.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

14.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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CRP.No.568 of 2023

T.V.THAMILSELVI, J.

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To
The Subordinate Judge,
Tiruvottiyur

CRP.No.568 of 2023

14.03.2023