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C.R.P.No.2389 of 2021

C.R.P.No.2389 of 2021
and
C.M.P.No.18144 of 2021

V.BHAVANI SUBBAROYAN.J.

This matter is listed today under the caption 'For Being Mentioned' at the instance of the learned counsel for the petitioners.

2. The learned counsel for the petitioners would submit that a typographical error has been committed in Paragraph Nos.3, 5 & 17 of the order passed by this Court in the above C.R.P.No.2389 of 2021 and C.M.P.No.18144 of 2021 dated 30.03.2023 and therefore, the same has to be corrected as follows:

“i) In Line 8 of Para 3 of the Order, instead of 'Brunch Partnership Juices', 'Brunch Chats and Juices', is to be typed.

ii) In Line 8 of Para 5 of the Order, instead of cause, case is to be typed.

iii) In Line 25 of Para 17 of the Order, instead of petitioners to the respondent, respondent to the petitioners, is to be typed.”



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3. In view of the submissions made by the learned counsel for the petitioners, this Court is inclined to correct the above said errors made in Paragraph Nos.3, 5 & 17 of the order passed by this Court in C.R.P.No.2389 of 2021 and C.M.P.No.18144 of 2021 dated 30.03.2023.

4. Accordingly, the errors committed in Paragraph Nos.3, 5 & 17 of the order dated 30.03.2023 in C.R.P.No.2389 of 2021 and C.M.P.No.18144 of 2021 is corrected as stated by the learned counsel for the petitioners above.

5. The Registry is directed to make necessary amendments in the order dated 30.03.2023 and issue order copy a fresh.

25.04.2023

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C.R.P.No.2389 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2389 of 2021 &
C.M.P.No.18144 of 2021

1. M.Kamaraj
2. R.Ranjith
3. S.Sumith Jain

... Petitioners

Vs.

T.G.Praveen kumar

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.10.2021 of the learned XV Additional Judge, City Civil Court, Chennai in I.A.No.1 of 2021 in O.S.No.9041 of 2019 by allowing the present Revision.

For Petitioners : Mr.S.Hajamohideen Gisthi

For Respondent : Mr.R.Narayanan

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.10.2021 of the learned XV Additional Judge, City Civil Court, Chennai in I.A.No.1 of 2021 in O.S.No.9041 of 2019 by

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allowing the present Revision.

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2. The brief facts of the case are as follows:-

The petitioners are the plaintiffs and the respondent is the defendant. The suit in O.S.No.9041 of 2019 is filed by the plaintiffs to direct the respondent to pay the 1st petitioner / 1st plaintiff a sum of Rs.9,01,000/- payable under the memorandum of understanding dated 23.04.2019 in addition to Rs.1,00,000/- towards monetary compensation for the delay and mental agony caused to the petitioners / plaintiffs. I.A.No.1 of 2021 was filed by the respondent / defendant to grant unconditional leave to him to defend the suit. Resisting the same, a counter was filed by the petitioners / plaintiffs. The said petition was allowed on 04.10.2021, thereby the respondent / defendant was granted unconditional leave to defend the suit. As against the same, the present revision is filed by the petitioners / plaintiffs.

3. The learned counsel for the petitioners would submit that the fair and decretal order dated 04.10.2021 passed by the learned XV Additional Judge, City Civil Court in I.A.No.1 of 2021 in O.S.No.9041 of 2019 allowing the same unconditionally is unsustainable in law and facts, in view of the



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fact that under Memorandum of Understanding dated 23.04.2019 (Ex.R.3) executed by the respondent, he categorically and in clear terms already admitted that he will pay Rs.9,01,000/- to the petitioners' partnership firm 'Brunch Chat and Juices', as confirmed under Ex.R-9, Email dated 27.05.2019 and that the amount payable by the respondent was arrived at after deducting the rental arrears of Rs.1,50,000/- payable to the petitioner and his mother viz., Gowri, owner of the premises in the ground floor taken on rent by the petitioners under rental agreement dated 01.06.2018.

4. The learned counsel for the petitioners also contends that the learned Judge ought to have seen that the respondent herein let out the residential portion of the house in the 2nd floor under another rental agreement dated 01.06.2018 and that the revision petitioners had vacated both the premises / shop portion owned by the respondent's mother and the residential portion of the house in the 2nd floor owned by the respondent on 31.03.2019 and that the security deposit of Rs.3,00,000/- paid in respect of the premises / shop portion owned by the respondent's mother as well as the security deposit of Rs.50,000/- paid in respect of the residential portion of the house in the 2nd floor owned by the respondent were returned on 23.04.2019 under cheques.

5. The learned counsel for the petitioners also submits that the



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learned judge erred in entertaining the plea of the respondent that the respondent executed Ex.R.3 Memorandum of understanding dated 23.04.2019 due to threat, coercion and undue influence and the same is only an after thought and the respondent is making incorrect statement for the first time only to obtain leave to defend the suit and drag on the same without any substantial and sustainable defence or triable issue in the case. The learned judge failed to note that the so called threat and coercion and undue influence was never even whispered on any occasions and only in the reply notice dated 16.07.2019, he alleges the same.

6. The learned counsel for the petitioners also represented that learned judge erred in not appreciating that the contentions relating to the payments made by the petitioners in respect of the sale agreement dated 12.05.2018 entered into with the respondent for purchase of the materials and articles lying within the rented premises for a sum of Rs.4,51,000/- and receipt of sale price was duly acknowledged and endorsed in writing by the respondent and the articles purchased were resold to the respondent under Ex.R3 which cannot be construed as disputed liability, it is an admitted liability.

7. Lastly, the learned counsel for the petitioners contends that the



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learned Judge should have atleast directed the respondent to deposit the amount due under Ex.R3 in view of the Judgment of the Hon'ble Supreme Court of India reported in 2017 (1) SCC Page 568 [IDBI Trusteeship Services Limited Vs.Hubtown Limited], thereby seeks to allow the present Revision.

8. Per contra, it is the contention of the learned counsel for the respondent / defendant that the defendant's mother, viz., T.Gowri is the absolute owner of the property being shop at ground floor. Considering the petitioners' interest, the defendant entered into a rental agreement with the petitioners on 01.06.2018 and received a rental advance of Rs.3,00,000/- on 19.05.2018 and fixed a monthly rent of Rs.18,000/- and maintenance amount of Rs.17,000/- for the said premises. Prior to the execution of said rental agreement dated 01.06.2018, the respondent intended to sell the articles, viz., table, chairs, vessels, cash counter, iron racks, freezers lights fans and other electronic equipment, gas stoves, cupboards, juice counters, chimney, chat counter display counter including other interior for a total consideration of Rs.4,51,000/- to the petitioners.

9. Further, the learned counsel for the respondents contends that the



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petitioner had entered into sale agreement and thereby paid Rs.21,000/- and agreed to pay the remaining amount of Rs.4,30,000/- within a month from thereon and accordingly, the petitioners paid a sum of Rs.2,00,000 on 17.07.2018 and 19.07.2018 through their bankers and also paid the remaining sum of Rs.2,30,000/- in cash. But it is quite contrary that they had given a hand loan of Rs.2,00,000/- The petitioners expressed their inability to continue the said business and intended to resell the said articles to the respondent and gave an intimation to vacate the said rented premises. Accordingly, the advance amount of Rs.3,00,000/- was paid by way of cheque dated 23.04.2019 and the same was recorded by the petitioners by way of their letter.

10. It is represented on behalf of the respondent that the petitioners have literally violated the terms and conditions enumerated in the rental agreement dated 01.06.2018 more particularly in respect of clause nos.11, 12, 14 and 17 and thereby committed breach of agreement.

10(i) As per clause 11, 'both the parties should give 3 months' notice for vacating the shop either side' . The petitioners have not complied with the said clause. On 27.03.2019 the petitioners had called over mobile and



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suddenly intimated regarding termination of the rental agreement and also intended to vacate the premises on 31.03.2019 and on such date, without even such basic courtesy to handover the keys gave the keys to the neighbour shop namely, Bengali Fun foods, after vacating the same.

10(ii) As per clause 12: During the process of vacating the premises, the petitioners have taken away, major articles, namely, chairs, vessels, cash counter, freezers, juice counter, chat counter and other essential items worth Rs.1,85,000/- and also damaged interior works of the said rented shop premises including the removal of electricity service, wires, switch boards, which cost Rs.40,000/- , hence the respondent was constrained to bear huge financial investments totalling to Rs.2,25,000/- , which is against Clause 12.

11. The learned counsel for the respondent further contends that the petitioners have further defaulted in making monthly rents both to the rented shop and house premises more particularly, for the months of January, February and March 2019 aggregating to a sum of Rs.1,50,000/- which has to be paid by the petitioners. That apart, on 23.04.2019, the petitioners demanded to sign Memorandum of Understanding for the resale of the said articles thereby compelled the respondent to purchase the same



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without providing sufficient opportunity to him in order to verify the articles, its working nature and assess the valuation of the same after its depreciation. Therefore, with respect to alleged claim of Rs.4,00,000/- for the petitioners' additional interior works, which is not binding on the respondent, hence clause 17 that 'tenant cannot claim for the investment that he had made in the premises for the business at any point of time' has been violated.

12. Lastly, the learned counsel for the respondent submits that the claim of Rs.9,01,000/- by the petitioners is false and incorrect. As far as the hand loan of Rs.2,00,000/- and their additional works of Rs.4,00,000/-, there is no existing liability on the part of the respondent. Regarding the liability of purchase of articles at Rs.3,01,000/- the petitioners had taken away articles worth Rs.1,85,000/- due to poor maintenance of tenanted premises, thereby incurred huge repair works at cost of Rs.40,000/- , intotal Rs.2,25,000/- which sum is to be deducted from the petitioners claim of Rs.3,01,000/- . The respondent already paid the rental advance amount of Rs.3,00,000/- and Rs.50,000/- on 23.04.2019 itself to the petitioners, who admitted the same. Therefore, the total claim of Rs.9,01,000/- made by the petitioners is against the respondent, hence the same is vexatious, thereby



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pleaded to dismiss the present revision. The learned counsel has relied on the Order of this Court [Palaniappa Chettiar Vs. S.A.Chidambaram Chettiar] reported in AIR 1965 Mad 218 in support of his contention.

13. Heard the learned counsel on either side and perused the documents placed on record.

14. With regard to the question of leave to defend, as noticed, the court below has observed that the respondent / defendant is entitled to such leave because triable issues were arising out of the defence sought to be taken by the petitioners. The principles of law for grant or refusal of leave to defend has been well settled by the Hon'ble Supreme Court in IDBI Trusteeship Services Limited vs. Hubtown Limited, (2017) 1 SCC 568. The relevant portion of the judgement are as follows:

“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corp., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36], as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the



plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is



admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

15. Further, the Hon'ble Supreme Court in the case of B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation and Ors (18.01.2022 - SC) :[MANU/SC/0048/2022] among other things held as under:

“The Supreme Court while discussing the scope of Order XXXVII Rule 3 of the Code of civil Procedure 1908; The grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception, the court held as follows:-

17.1 As noticed, if the Defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the Defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the Defendant raises triable issues, but it remains doubtful if the Defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear



to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

17.2. Thus, it could be seen that in the case of substantial defence, the Defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the Defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the Defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the Defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court view that the defence is frivolous or vexatious that the leave to defend is to be refused and the Plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the Plaintiff is admitted by the Defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the Defendant in the Court.

17.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the Rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues,



with the Defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the Defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.

16. That apart, the Hon'ble Supreme Court in *Sudin Dilip Talaulikar Vs. Polycap Wires Pvt. Ltd. and Ors.* (15.07.2019 - SC) : reported in MANU/SC/0908/2019 among other things held as under:-

“11. In a summary suit, if the Defendant discloses such facts of a prima facie fair and reasonable defence, the court may grant unconditional leave to defend. This naturally concerns the subjective satisfaction of the court on basis of the materials that may be placed before it. However, in an appropriate case, if the court is satisfied of a plausible or probable defence and which defence is not considered a sham or moonshine, but yet leaving certain doubts in the mind of the court, it may grant conditional leave to defend. In contradistinction to the earlier subjective satisfaction of the court, in the latter case there is an element of discretion vested in the court. Such discretion is not absolute but has to be judiciously exercised tempered with what is just and proper in the facts of a particular case. The ultimate object of a summary suit is expeditious disposal of a commercial dispute. The



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discretion vested in the court therefore requires it to maintain the delicate balance between the respective rights and contentions by not passing an order which may ultimately end up impeding the speedy resolution of the dispute”

17. In the present case on hand, the Trial Court had observed that the respondent / defendant has raised triable issues. Even as per the plaint averments and petitioners / plaintiffs' assertions, Ex.R.1, rental agreement, dated 01.06.2018 , Rs.3,00,000/- is shown as advance and the same has been returned while vacating the property and another sum of Rs.50,000/- is shown as advance, vide Ex.R2 another rental agreement for residential portion. It is admitted that the same was also returned. When the advance amount is returned, then, there is no question of alleged damages to the building arise after refund of advance amount. On going through the Memorandum of Understanding [filed by the respondent] dated 23.04.2019, Ex.R3, it is stated that the petitioners sold the articles inside the shop to the respondent for a sum of Rs.4,51,000/-, which were earlier sold by the respondent to the petitioners under sale agreement dated 12.05.2018, out of the said amount, after adjusting the sum of

Rs.1,50,000/- towards rental arrears the balance of Rs.3,01,000/- will be



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paid by the respondent to the petitioners, however, the respondent claims that the petitioners have taken away the articles worth Rs.1,85,000/- and due to poor maintenance of the tenanted premises, the respondent had incurred huge repair works at the cost of Rs.40,000/- in totaling to Rs.2,25,000/-. Other than that, interiors done by the petitioners namely, furniture, name board in acrylic sheet and outside elevation for a sum of Rs.4,00,000/-, handloan Rs.1,00,000/- and another sum of Rs.1,00,000/-, in toto a sum of Rs.10,51,000/- and out of this, Rs.1,50,000/- has been paid by the petitioners and balance of Rs.9,01,000/- will be paid by the respondents to the petitioner on or before 23.05.2019, as per the agreement dated 23.04.2019 [Ex.R3] and there is no default clause mentioned. From the above facts, it is clear that the respondent has raised triable issues and the lower court has rightly allowed the application filed by the respondents.

18. Before parting with the case, it is important to note that even as per Memorandum of understanding dated 23.04.2019 filed by the respondent, it is agreed by the respondent that a sum of Rs.3,01,000/- would be paid to the respondent on or before 23.05.2019, it appears that the same has not been paid till now, however, in the counter, the



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respondent at paragraph no.15 had stated that with regard to the liability of purchase of articles at Rs.3,01,000/-, the petitioners had taken away articles worth Rs.1,85,000/- and due to poor maintenance of tenanted premises, the respondent incurred huge repair works at Rs.40,000/- and in toto a sum of Rs.2,25,000/- is to be deducted, which sum is to be deducted from the petitioners claim of Rs.3,01,000/- cannot be accepted in view of the reason that the same is without any breakage and petitioners have paid the advance amount while vacating the premises. Hence the respondent is directed to deposit a sum of Rs.3,01,000/- as accepted by him in the Memorandum of Understanding dated 23.04.2019 [Submitted by the respondent in his typed set of papers] as well as in the E-mail dated 22.05.2019, Ex.R7.

19. In the totality of the circumstances of this case, this Court is clearly of the view that the respondent has indeed raised triable issues and the defence of the respondent cannot be said to be frivolous or vexatious altogether.

20. In the aforesaid view of the matter, this Court is inclined to hold that the respondent was rightly granted the leave to defend the claim made in the suit by the court below and the impugned order deserves to be



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affirmed for reasons assigned in this order and the respondent is directed to deposit a sum of Rs.3,01,000/- as agreed by him in the Memorandum of Understanding dated 23.04.2019 [Submitted by the respondent in his typed set of papers]. As the respondent is being granted leave to defend, the other contentions urged on behalf of the parties concerning its liability is not dealt with at present and all the relevant aspects are left open for consideration of the Trial Court.

21. Accordingly, this Revision Petition is disposed of and the amount of Rs. 3,01,000/- to be deposited by the respondent on or before 28th April, 2023 and the said amount shall be treated to be a deposit towards the condition for leave to defend. The Trial Court shall pass appropriate orders for treatment of the said amount of Rs. 3,01,000/- after trial. The court below shall proceed with the trial of the suit in accordance with law and the complete the same preferably within a period of six months from the date of receipt of a copy of the order. Consequently, connected miscellaneous petition is closed. No costs.

30.03.2023

Index : Yes/No;Internet : Yes/No
Speaking /Non-Speaking Order

V.BHAVANI SUBBAROYAN, J.,

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To

The XV Additional Judge,
City Civil Court, Chennai

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30.03.2023

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