



C.R.P.No.3884 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3884 of 2023

and

C.M.P.No. 23942 of 2023

M/s. Plaza Maintenance & Services Limited,
Represented by its Head – Accounts – Finance /
Authorized Signatory Mr. S.Srinivasan,
No.769, Anna Salai,
Chennai – 600 002.

.. Petitioner

Vs

M/s. Travancore Foods India Pvt., Ltd.,
FM – 18, Monasarova Complex,
No.7, Stop Shivaji Nagar,
Bhopal – 462 016.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 18.07.2023 in I.A.No.2 of 2023 in COS No.1852 of 2023 passed by Commercial Court, Chennai.

For Petitioner : Mr. K.K. Muralidharan

For Respondent : No Appearance



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C.R.P.No.3884 of 2023

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.2 of 2023 in C.O.S.No.1852 of 2022 before the Commercial Court, Chennai, the plaintiff preferred this revision.

2. Before the trial Court, the defendant filed application seeking leave to defend the suit. But according to the plaintiff, the defendant who admitted to pay Rs.26 lakhs through mail, hence he insisted the Court to deposit the said amount. But, while passing the order, the trial Judge has not imposed such condition as such is totally erroneous and liable to be set aside.

3. The learned counsel for the revision petitioner / plaintiff submits that in the e-mail dated 04.11.2016, the respondent / defendant issued mail and in that mail, the payment plan was given but while perusing the trial Court order, the undertaking given by the defendant has not been considered. By relying the ratio laid down in ***Southern Sales and Services and Ors. Vs. Sauermilch Design and Handels GMBH*** reported in



C.R.P.No.3884 of 2023

MANU/SC/4488/2008, reveals that the “*unconditional leave to defend a suit shall not be granted unless the amount as admitted to be due by the defendant is deposited in Court*”. In spite of the submission made by the revision petitioner before the trial Judge, it was not been considered, hence, he prayed to set aside the order passed in I.A.No.32 of 2023 in COS.No.1852 of 2023.

4. Heard the learned counsel for the petitioner. Though notice was served on the respondent, none entered appearance on behalf of him.

5. On considering the submission made by the learned counsel for the revision petitioner as well as the bare perusal of the mail issued by the defendant, it reveals that he admitted the plan to pay the amount mentioning as payment plan for Rs.26 lakhs. On seeing the counter objection filed by the revision petitioner in I.A.No.2 of 2023 in COS.No.1852 of 2022, elaborately stated about the date and events how the defendant is liable to pay the amount, the same was not been considered by the trial Judge while passing the order.



C.R.P.No.3884 of 2023

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6. Therefore, the order passed by the trial Judge in I.A.No.2 of 2023 in C.O.S.No.1852 of 2022 on the file of Commercial Court, Chennai is set aside. If at all the respondent / defendant wants to grant leave to defend the suit, he has to deposit the admitted amount as per the ratio laid down in the above referred case. Without influence of the finding of this Court, liberty is granted to the defendant to that effect.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

03.11.2023

Index :Yes/No
Neutral Citation :Yes/No
AT

Note: Issue order copy on 06.11.2023.



C.R.P.No.3884 of 2023

To
The Commercial Court, Chennai.



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C.R.P.No.3884 of 2023

T.V.THAMILSELVI, J.

AT

C.R.P.No. 3884 of 2023 and
C.M.P.No. 23942 of 2023

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