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C.R.P.(PD)No.3339 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3339 of 2019
and C.M.P.No.21709 of 2019

M/s.Maunag Food Company Pvt. Ltd.
Plot No.64, A-Phoenix Industrial Complex
3rd cross Hosur Road
Bommasundara Industrial Complex
Anekal Taluk, Bengaluru
Karnataka
Represented by its Authorised Signatory
Nithin Prabhakar

.. Petitioner

Vs.

M/s.SDB Select Services Private Limited
No.9/4, TTK 1st cross street
Alwarpet, Chennai-600 018.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 19.09.2019 passed by the learned III Assistant Judge, City Civil Court, Chennai, made in O.S.No.6020 of 2019 in so far as setting the petitioner exparte.



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For Petitioner : Mr.V.Srikanth

For Respondent : Mr.K.Mahalingam

ORDER

The civil revision petitioner is the defendant and the respondent is the plaintiff. The revision arises against a summary suit in O.S.No.6020 of 2019. The said suit had been presented on account of the fact that the civil revision petitioner/defendant had not honoured the bills that had been raised by the respondent/plaintiff for the security services that had been provided by the plaintiff to the defendant.

2. It transpires that the defendant was served only with a “private notice” in an interlocutory application, which was taken out for attachment. Immediately, a memo was filed by the learned counsel for the defendant stating that what was served on him is only the private notice in I.A.No.2 of 2019 and his client was not served with the affidavit and petition either in I.A.No.2 of 2019 or the plaint and the documents in O.S.No.6020 of 2019. Consequently, he sought for a prayer that the



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plaintiff be directed to serve the affidavit and petition and due orders be passed.

3. The trial Court took up the matter on 19.09.2019 and stated that since the learned counsel for the defendant had already entered appearance, he is deemed to have appeared in the suit and has no defence in the said suit, he was set exparte in the proceedings. I am extracting the order of the trial Court to that extent, which reads as follows:

“Mr.V.Srikanth had filed vakalat for the Defendant in the IA 2/19. He states that he is appearing only in the IA and is not entering appearance in the suit. In spite instruction he sticks to his stand that he is not Ready to enter appearance or continue to appear in the suit. He has also filed a memo is IA 2/19 to treat the suit as an Ordinary suit. Since there is No representation to the defendant in this suit, the defendant are set exparte. Marking of Document by 14.10.19. Memo Notice to the other side and objection if any by the plaintiff by 14.10.19. IA-2/19 - Counter not filed. Memo is filed by the Respondent. Call on 14.10.19 for objection.”



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4. The learned trial Judge had committed an error in treating the Advocate notice intimating the presentation of the interlocutory application as service of summons in the suit. Service of summons in the suit, especially in an under chapter suit, has other consequences. On service of summons in an under chapter suit, notice of appearance has to be given by the defendant to the plaintiff and within ten days thereafter, summons of judgment will be issued by the plaintiff to the defendant. The time granted in these two proceedings enables the defendant to move an application seeking leave to defend the suit. If leave to defend is granted unconditionally or conditionally, the suit is converted as an Ordinary suit under Order VII Rule 1 of C.P.C. if not, a decree in the suit follows.

5. The matter came up before this Court on 10.10.2019. Taking note of the aforesaid position of law, my brother Mr. Justice G.R.Swaminathan, was pleased to issue notice in the proceeding and grant stay. The stay has been extended by my brother Mr. Justice



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R.Suresh Kumar, on 31.10.2019. Pursuant to the orders of this Court dated 10.10.2019 and 31.10.2019, the defendant served the plaintiff in this revision. The plaintiff though was served, did not enter appearance before this Court. Therefore, on 14.08.2023, I requested Mr.V.Srikanth, learned counsel for the civil revision petitioner to serve Mr.K.Mahalingam, the learned counsel, who appears for the plaintiff before the trial Court.

6. When the matter is taken up today, both Mr.V.Srikanth as well as Mr.K.Mahalingam are present. I have heard both sides and perused the entire materials on record.

7. As already premised by me, the order of the learned trial Judge in treating the intimation given by an Advocate by way of a “private notice” as service in the suit is erroneous. However, if I were to set aside the order and remit it to the learned trial Judge to enable the defendant to file a leave to defend the application and follow the procedure under Order XXXVII Rule 4 of C.P.C., it will only lead to further rounds of



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litigation. I am not inclined to encourage the defendant to do so. This would only prolong the proceeding.

8. In these circumstances, considering the over all circumstances, in the exercise of power under Article 227 of the Constitution of India, I pass the following order:

(i) The order of the Court below dated 19.09.2019 in O.S.No.6020 of 2019 is set aside.

(ii) Mr.K.Mahalingam, shall serve the copy of the plaint and the documents in the suit on Mr.V.Srikanth by 22.08.2023.

(iii) Leave to defend the suit is granted to the civil revision petitioner on his depositing a sum of Rs.1,00,000/- (Rupees One lakh only) to the credit of O.S.No.6020 of 2019, on the file of the III Assistant City Civil Court, Chennai, within a period of four weeks from today i.e., on or before 18.09.2023.

(iv) On such deposit, the learned trial Judge is requested to treat O.S.No.6020 of 2019, presented as a summary suit, as a regular suit.



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(v) The defendant shall file a written statement on or before 22.09.2023.

(vi) The trial Court is requested to dispose of the suit in O.S.No.6020 of 2019 on or before 31.12.2023.

(vii) The trial Court is also requested to accept the web copy that will be produced by either party not only to proceed further, but also for deposit of the aforesaid amounts. It need not insist upon them to produce a certified copy of the order of this Court.

9. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note:Issue order copy on 22.08.2023

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V.LAKSHMINARAYANAN,J.

Kj

To

III Assistant Judge
City Civil Court, Chennai.

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