



C.R.P.Nos.347 and 354 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2023

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THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.347 and 354 of 2020
and
C.M.P.Nos.1826 and 1854 of 2020

Tecknoweld Alloys (Overseas) Pvt.Ltd.
Plot No.B-37, Sipcot Industrial Growth Centre,
Oragadam, Sriperambudur Taluka,
Kancheepuram District, Chennai – 602 105.

...Petitioner/Defendant

Vs.

M/s Test Steel Suppliers
Represented by its Proprietor Mr.P.Sridhar,
New No.36, old no.70, II Floor,
Sembudass Street, Chennai – 600 001.

...Respondent/Plaintiff

Prayer in C.R.P.No.347 of 2020:Civil Revision Petition filed under
Article 227 of the Constitution of India, 1950 against the fair and decreetal
order dated 06.08.2019 made in I.A.No.1 of 2019 and the consequential



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order made in O.S.No.2721 of 2019 by the XIX Additional City Civil Judge at Madras.

Prayer in C.R.P.No.348 of 2020: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 against the fair and decreetal order dated 06.08.2019 made in I.A.No.1 of 2019 and the consequential order made in O.S.No.2722 of 2019 by the XIX Additional City Civil Judge at Madras.

In both CRPs.

For Petitioner : M/s.Thriyambak J Kannan

For Respondent : Mr.R.Prasanna Vineeth Durai
: for M/s.N.Premkumar.

COMMON ORDER

These two civil revision petitions arise against the order passed by the XIX Additional City Civil Judge at Madras. For the sake of convenience, the parties are being referred to as their ranks in the suit.



2.The petitioner before me is the defendant. The respondent filed a suit for recovery of money in O.S.No.2721 of 2019 for a sum of Rs.36,88,992/- and in O.S.No.2722 of 2019 for a sum of Rs.40,70,100/-.

3.In both the suits, the summons for hearing were served on 11.06.2019. The Notice of Appearance as per Order 37 Rule 3 should have been filed on or before 21.06.2019. However, on account of the fact that the hearing date was fixed as 28.06.2019, the learned counsel for the defendant had issued the notice of appearance only on 28.06.2019, instead of 21.06.2019.

4.Taking note of this lacuna on part of the defendant, the plaintiff seized the opportunity and filed a memo stating, since notice of appearance was not issued on or before 21.06.2019, the defendant forfeited his right to file an application for leave to defend. Recording this memo in both the suits, the learned Judge had dismissed the application for leave to defend as infructuous. It is against these orders, the present revisions have been presented.



5. Heard Mr.Thriyambak J Kannan learned counsel for the petitioner and Mr.R.Prasanna Vineeth Durai, learned counsel for the respondent.

6. Mr.Thriyambak J Kannan, learned Counsel for the petitioner would bring to my notice that Order 37 Rule 3 (7) to state that if sufficient cause is shown, a court dealing with an under chapter suit can condone the delay either in entering appearance or applying for leave to defend. This shows that the period fixed for notice of appearance is not mandatory but is subject to the extension of time that might be granted by the court.

7. Apart from that, it is clear from the “A” diary (which has been sent to the court) that instead of posting the matter on 21.06.2019, the court has posted the matter on 28.06.2019. Due to the fact that there was no hearing in between, perhaps the learned counsel for the defendant felt that he could file the notice of appearance as well as leave to defend on the next date of hearing.



8. I do not want to set aside the order dismissing the application for leave to defend and remand it for fresh disposal. It would only lead to delay in disposal of the suits.

9. A reading of the leave to defend application shows that the supply of materials is not in dispute but what is in dispute is that several debit notes have been raised by the defendant on the plaintiff with respect to the supply of the goods. It is not restricted to the quality but also with respect to the other matters which gave rise to a triable issue. When this was pointed out to Mr.Thriyambak J Kannan, he states his client will be willing to abide by any condition that might be imposed by this court. Therefore, I am imposing the condition for deposit of the amount as a condition to allow the leave to defend application in I.A.No.1 of 2019 in the respective suits.

10. The matter having been pending from the year 2019, I feel interest of justice will be served if the defendant submits two fixed deposit receipts for sum of Rs.36,88,992/- and sum of Rs.40,70,100/-, being the



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amounts claimed in O.S.Nos.2721 and 2722 of 2019 respectively before the trial courts. The fixed deposits shall be initially for a period of 3 years and shall be renewed if necessary till the disposal of the suit. The fixed deposit receipts shall be submitted to the court on or before 31.08.2023.

11.On production of the fixed deposit receipts the court shall take up the O.S.Nos.2721 and 2722 of 2019 and convert it as a regular suit and permit the petitioner to file a written statement within a period one month thereafter. On receipt of the written statement the suit shall be proceeded with as expeditiously as possible and will be disposed of on or before 31.03.2024.

12.The above civil revision petitions stand allowed with the above directions. No costs. Connected Miscellaneous Petitions are closed.

17.08.2023

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Index : Yes /No

Speaking Order : Yes/No

Neutral Citations : Yes/No

To:

The XIX Additional
City Civil Judge,
Chennai.



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Note:-Registry is directed to upload the order copy on 04.09.2023.

V. LAKSHMINARAYANAN.J,

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