



WEB COPY



C.R.PD.No.1663 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.PD.No.1663 of 2024

and

C.M.P.No.8796 of 2024

Chiraguddin M.D.Musadiquddin
Proprietor of M/s. New Life Style
Shop No.106, 1st Floor, 2nd Phase,
No.768-769, Spencer Plaza,
Anna Salai, Chennai – 600 002.

... Petitioner

Vs.

M/s.R.A.Knitwear Private Limited
Rep. By its Authorised Person and HR-In charge
Mr.G.Ramarajan,
Son of Mr.Gopal
Post Box No.279,
No.43, Mettupalayam Extn.
P.N.Road, Tiruppur – 2.

... Respondent

PRAYER: Revision filed under Article 227 of the Constitution of India
praying to set aside the fair and decretal order dated 06.01.2024 passed
in I.A.No.5 of 2023 in O.S.No.76 of 2020 by the learned Additional
Subordinate Court at Tiruppur.

For Petitioner : Mr.L.Gavaskar

ORDER



C.R.PPD.No.1663 of 2024

A suit had been presented in O.S.No.76 of 2020 before the Additional Subordinate Judge at Tiruppur for recovery of a sum of Rs.2,82,784.23. The plaintiff also claims interest at the rate of 24% per annum.

2. This suit relates to goods which had been dispatched by the plaintiff to the defendant. The defendant is a business man in Chennai. Having received the goods, he did not pay the plaintiff for the materials sent by him. Hence, the suit.

3. The defendants entered appearance through a lawyer and filed a detailed written statement. Thereafter he remained *exparte*. The Court having no other option, decreed the suit as prayed for, setting the petitioner *exparte* on 02.02.2023. To set aside the *exparte* order, an application was taken in I.A.No.5 of 2023. This was resisted by the respondent/ plaintiff by filing a detailed counter stating that this is the third time an application has been filed to set aside the *exparte* order. Nonetheless, the learned Trial Judge, after considering the arguments of both sides in order to grant an opportunity to the petitioner had allowed the application. He directed him to deposit half the suit amount viz.,



C.R.PPD.No.1663 of 2024

Rs.1,41,397/- on or before 30.01.2024. This order is put to challenge before me.

4. M.L.Gavaskar for the petitioner would submit that the condition is onerous and he is unable to pay the amount. He, therefore, would request that this amount be reduced. However, on going through the extract of proceedings as reproduced hereunder, I am unable to agree with him.

a. 04.01.2023 – PW1 present. At request of defendant side adjourned to 9.1.2023.

b. 09.01.2023 – 25.01.2023

c. 25.01.2023 – PW 1 present. Defendant absent. Hence adjourned to 2.2.2023

d. 02.02.2023 – PW1 present. Evidence of PW1 not cross examined inspite of sufficient time given. Hence PW1s evidence closed. Defendant called absent and set *exparte*. For plaintiff side further evidence adjourned to 9.2.23.

e. 09.02.2023 – At request of Plaintiff, adjourned to 17.2.2023

f. 17.02.2023 – Plaintiff side reported no further evidence.

PSE closed. For arguments adjourned to 27.2.2023

g. 27.02.2023 – 03.08.2023

h. 03.03.2023 – This petitioner / defendant had come up with the second false and frivolous application to drag the



C.R.PPD.No.1663 of 2024

above said suit endlessly. He filed two applications in I.A.No.3/2023 & I.A.No.4/2023 to reopen the plaintiff side evidence and to recall the PW1 and the same was allowed by this Hon'ble Court on 07.08.2023.

i. 17.10.2023 – Again this petitioner / defendant had not appeared before this Hon'ble Court and inspite of the same, this Hon'ble Court has passed the following order,

“ PW1 present. No representation from defendant side till 1.30 PM. Defendant called absent and set *exparte*. PW1s evidence closed. For plaintiffs further evidence adjourned to 17.10.2023”

j.09.11.2023 – For the third time, this petitioner / defendant had come up with this false and frivolous application to drag the above suit endlessly.”

The extract makes it clear that the petitioner has been attempting to drag on the proceedings only to ensure that the plaintiff does not see the colour of the coin.

5. Nonetheless the learned Trial Judge, in order to give an opportunity to the petitioner, has granted an order to deposit only 50% of the amount. When an *exparte* order is passed, the Court is entitled to impose condition under Order IX Rule 7 of the Code of Civil Procedure at the time of setting aside the *exparte* order. This is not the first application, but the third application filed by the defendant to set aside the *exparte*



C.R.PPD.No.1663 of 2024

order. Therefore, the learned Trial Judge, in order to ensure the smooth progress of the case, has directed the deposit of 50% of the amount. I am not in a position to disagree with the learned Judge. The learned Judge has been very cautious in allowing the application by imposing conditions. The condition is neither onerous nor unreasonable especially in a suit for recovery of money for goods sold and delivered. Time for deposit is extended till 14.06.2024. In case the amount is not deposited, the application will stand dismissed.

6. In fine, the Civil Revision Petition is dismissed. However, time granted by the Trial Court for depositing the amount is extended. In all other terms, the order of the learned Judge stands confirmed. No costs. Consequently, connected miscellaneous petition is also dismissed.

12.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Sgl



WEB COPY



C.R.PD.No.1663 of 2024

V.LAKSHMINARAYANAN, J.

Sgl

To

The Judicial Magistrate No.1,
Tiruppur.

C.R.PD.No.1663 of 2024

12.04.2024