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Appeal (CAD) No.22 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

Appeal (CAD) No.22 of 2024
and
C.M.P. No.13649 of 2024 in Appeal (CAD) No.22 of 2024

1.M/s.Tristar Accommodations Ltd.,
rep. By its Managing Director
Rashmi Rajan Kapoor,
No.657, Tristar Towers,
Avinashi Road, Coimbatore – 641 037.

2.Padmini Rajan

3.Uma Rajan

4.Rashmi Rajan Kapoor

.. Appellants

Vs

Vathsala Jagannathan

.. Respondent

Appeal filed under Section 13(1A) of The Commercial Courts Act, 2015 against the fair and decretal order of the Commercial Court (District Judge Cadre) at Coimbatore dated 13.12.2023 in I.A.No.1 of 2023 in C.O.S. No.140 of 2023.

For Appellants : Mr.Sricharan Rangarajan,
Senior Counsel
for Mr.Hari Krishna G.



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by **M.Sundar, J.**)

Read this in conjunction with and in continuation of our earlier proceedings made in the listing on 06.08.2024 which reads as follows:

**'Appeal (CAD) No.22 of 2024
and C.M.P. No.13649 of 2024**

**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

Captioned appeal has been presented in this 'Commercial Appellate Division' (CAD) on 15.03.2024 assailing an order dated 13.12.2023 made in I.A. No.1 of 2023 in C.O.S. No.140 of 2023 (CNR No.TNCB22-000587-2023) on the file of Commercial Court (District Judge Cadre), Coimbatore. This '13.12.2023 order' shall hereinafter be referred to as 'impugned order' and 'Commercial Court (District Judge Cadre), Coimbatore' shall hereinafter be referred to as 'said Commercial Court' both for the sake of convenience and clarity.

2. The impugned order has been made by said Commercial Court in an application for rejection of plaint under Order VII Rule 11 (a) and (d) of 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience and clarity] taken out by D1 to D4 in the suit. To be noted, D5 has not joined D1 to D4 in the application. After full contest, said Commercial



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Court has dismissed defendants' application for rejection of plaint. To be noted, rejection of plaint plea was primarily predicated on the points that (a) there is no cause of action and (b) that the suit is barred by limitation but there are other grounds also.

3. Be that as it may, before filing the captioned appeal in this CAD, the defendants moved this Court by way of a Civil Revision Petition under Article 227 of The Constitution of India being C.R.P. No.293 of 2024 and the same came to be disposed of by a Hon'ble single Judge in and by an order dated 07.02.2024.

*4. The question as to whether the captioned appeal is maintainable in the light of Section 13(1-A) proviso of 'The Commercial Courts Act, 2015 (Act 4 of 2016)' (hereinafter 'CCA' for the sake of brevity, convenience and clarity) arises. We will be testing the maintainability notwithstanding the order of Hon'ble Single Judge in the CRP as we will be testing the order in the light of **Hindustan Unilever Limited Ponds House v. S.Shanthi (DB)** rendered by a Hon'ble Division Bench and reported in **2021 (6) CTC 1** and **Surajlal** principles being **Surajlal Vs. Pradeep Stainless India Pvt. Ltd. and others** rendered by a Hon'ble Full Bench and reported in **2023 (2) CTC 257**. To be noted, **Surajlal** has been rendered by Hon'ble Full Bench but similar matters are scheduled to be heard by this Bench tomorrow. In other words, we will be testing the maintainability of captioned appeal.*

5. In the aforesaid scenario, Mr.Sricharan Rangarajan, learned senior counsel appearing for Mr.S.V.Pravin Rathinam, counsel on record for appellants submits that the suit is proceeding at a hectic pace in said Commercial Court and it is



listed today for cross-examination of P.W.1. As we have to test the maintainability or in other words subject to maintainability, let said Commercial Court keep in abeyance all proceedings in C.O.S.No.140 of 2023 and await further orders of this Court i.e., this CAD.

6. Before we conclude, we find that Registry has shown the name of the counsel who represented the respondent in the CoD petition being C.M.P. No.12137 of 2024 which was filed by the appellant with a prayer for condonation of 17 days delay in filing the captioned appeal. As delay that was sought to be condoned is delay in 'filing', notice was ordered to respondent and CoD CMP was allowed after hearing respondent who entered appearance through counsel. On disposal of the CMP (C.M.P. No.12137 of 2024 on 18.06.2024) wherein and whereby the delay was condoned, the vakalatnama filed by the respondent in the CMP also comes to an end. Merely because a counsel has represented the respondent in the delay condonation (CoD CMP), the name should not be shown when the appeal is listed for admission. To be noted, the appeal itself comes into existence only after condonation of delay. It is seen that such a practice is being adopted by the Registry repeatedly. In the case on hand, we find that the respondent has filed vakalatnama dated 08.07.2024 in the captioned appeal after disposal of CRP on 07.02.2024. A scanned reproduction of the vakalatnama is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(APPELLATE JURISDICTION)
APPEAL (CAD). No. 22 of 2024
S. TRISTACOMMUNICATIONS PVT LTD AND OTHERS.
...Appellants
Versus
VATHSALA JAGANNATHAN
...Respondents

I. VATHSALA JAGANNATHAN
In the above Petition do hereby appoint and retain
**M/s SARVAIHAUMAN ASSOCIATES,
K.VENKATASUBBAN, M.S.SWATHISH KUMAR & PRAVEEN.R**
No.39, Law Chambers, High Court Buildings,
Chennai-600 104

Advocates of the High Court to appear on my/our behalf in the above Petitions and to conduct and prosecute (or defend) the same and all Proceedings that may be taken in respect of any application connected with the same or any decree or order passed thereon including all applications for return of documents or the receipt of any money that may be payable to us in the said petition and also in appeal under section 43 of the Letters Patent and application for leave to the Supreme Court of India and in all application to review the Judgment.

I certify that the contents of this Vakalat were read out and explained to *me* in my presence to the Executant who appeared perfectly to understand the same and made His/Her/their signature in my presence.

Executed before me on this 08th day of July, 2024

ACCEPTED
[Signature] 15/7/2024

A. VIVEKANANDAN, B.A., LL.B(Honours)
MS. No: 703/2022
12/04, Murugan Nagar, 2nd Street,
Kannan Nagar, Coimbatore - 641 027.

[Signature] 15/7/2024 *[Signature]* 15/7/2024



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7. Registry has accepted the above vakalatnama. This is plainly incorrect. Registry is directed to not to accept vakalatnamas for respondent until this Court issues notice regarding admission or admits and issues notice to the respondent. Another scenario is where there is a specific direction from the Court to print the name of a particular counsel for respondent. Absent any of these scenarios, Registry shall not accept vakalatnamas for respondent in appeals which are yet to be admitted i.e., which are in the Admission Board as regards CAD. Another scenario is obviously where the respondent has lodged a caveat anticipating an appeal and such scenario, name of the counsel shall be shown as counsel for caveator (not as counsel for respondent/s). To be noted, this directive is qua CAD and it does not apply to regular appeals under Section 96 of CPC.

8. List the captioned appeal tomorrow. List on 07.08.2024.'

2. Aforementioned 06.08.2024 proceedings is tell-tale and therefore, we are not delving more or dilating much on the same. Suffice to say that the aforementioned proceedings dated 06.08.2024 shall now be read as an integral part and parcel of this order. The short forms, abbreviations and short references used in the aforementioned proceedings dated 06.08.2024 will continue to be used in the instant proceedings for the sake of convenience and clarity.

3. Today, Mr.Sricharan Rangarajan, learned senior counsel



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appearing on behalf of Mr.S.V.Pravin Rathinam, learned counsel on record for appellants adverting to aforementioned 06.08.2024 proceedings submits that the counsel on record for appellants may please be granted leave to withdraw the captioned appeal preserving the rights of the appellants to prefer a review qua the order dated 07.02.2024 made in C.R.P. No.293 of 2024. In this regard, learned counsel on record for appellants has made an endorsement in the case file and a scanned reproduction of the same is as follows:

praying to withdraw the Appeal
with a leave to file a
review in CRP 293 of 2024
G. HARI KRISHNAN
MS 5511/22
Counsel for Appellant
24.10.2024

4. Aforementioned request to withdraw captioned appeal acceded to, preserving all the rights and contentions of both sides.



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5. Before we proceed further, we deem it appropriate to write that vide 'Surendira case' (O.S.A.(CAD)No.59 of 2024), we had already directed the Registry to place before Hon'ble Chief Justice the suggestion that Article 227 CRPs arising from Commercial Courts should also be listed before CAD. To be noted, a judicial order made by a Division Bench of Hon'ble Delhi High Court in **Puma SE** being **Imtiyaz Sheikh Vs. Puma SE** reported in **2021 SCC OnLine Del 3946** buttresses this suggestion. As we are not relying on **Puma SE** as a precedent, we are not going into facts and we deem it appropriate to say that paragraphs 13, 14 and 15 of **Puma SE** are relevant and the same read as follows:

'13. That brings us to the question no.(ii) i.e. whether a petition under Article 227 of the Constitution of India with respect to a proceeding/order in a commercial suit at the level of the District Judge is to be heard by the Commercial Appellate Division or by the bench allocated in the roster to hear petitions under Article 227 of the Constitution of India.

14. The aforesaid question was framed because as per the prevalent roster allocation of this Court, petitions under Article 227 of the Constitution of India as well as revision applications under Section 115 of the CPC, are to be heard by a Single Judge Bench of this Court. Similarly, appeals against orders in a non-commercial suits at the level of District Judge/Additional District Judge, as per roster allocation, are heard by a Single Judge Bench of this Court. However since the



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Commercial Courts Act, vide Section 13(1A), requires appeals from commercial suits at the level of the District Judge to be heard by the Commercial Appellate Division, need was felt to hear the counsels, whether the petitions under Article 227 of the Constitution of India arising from such commercial suits should also be heard by a Division Bench or by the Commercial Appellate Division, as held by the Single Judge of this Court before which these petitions were listed.

15. The senior counsel for the respondent in CM (M) No.132/2021 has again rightly contended that the remedy under Article 227 of the Constitution of India being de hors the Commercial Courts Act, would not be governed and guided by the Commercial Courts Act and would be governed by the roster allocation of this Court. It thus follows, that petitions under Article 227 of the Constitution of India arising from proceedings in commercial suits at the level of the District Judge also would be heard by the bench empowered under the roster to hear such petitions and which bench as per the present roster is of a Single Judge of this Court. Of course, it is open to Hon'ble the Chief Justice to in his discretion allocate hearing of petitions under Article 227 emanating from commercial suits at the level of the District Judge, to any other bench including to a division bench. The question no.(ii) aforesaid also stands answered accordingly.'

6. **Puma SE** was carried to Hon'ble Supreme Court vide S.L.P.

(C) Nos.17030-17031/2021 and the SLPs were dismissed by



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Hon'ble Supreme Court in and by an order dated 13.11.2021.

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7. While we grant leave to the appellants to withdraw the captioned appeal with liberty to prefer review as alluded to supra, we also direct the Registry to place a copy of this order before The Hon'ble Chief Justice along with 'Surendira case' (O.S.A.(CAD)No.59 of 2024) where a suggestion for determination/portfolio allocation whereby Article 227 CRPs from Commercial Courts would also be listed before CAD has been made.

8. We make it clear that listing of Article 227 CRPs post review order would be subject to determination by The Hon'ble Chief Justice.

9. As regards our 06.08.2024 proceedings, we have made it clear that the Commercial Court shall keep in abeyance all proceedings in C.O.S.No.140 of 2023 and await further orders. This position will continue for another four weeks from today i.e., till 21.11.2024, considering the intervening Deepavali Holidays.

10. Captioned appeal is disposed of as withdrawn *albeit* with preservation of rights in the aforesaid manner and with a directive



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to the Registry to place a copy of this order before The Hon'ble
Chief Justice along with 'Surendira case' (O.S.A.(CAD)No.59 of
2024). Consequently, captioned CMP thereat is disposed of as
closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
24.10.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To

The Commercial Court (District Judge Cadre),
Coimbatore.

M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,



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