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C.R.P.(NPD)Nos.2646 and 2647 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

PRONOUNCED ON : 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(NPD)Nos.2646 and 2647 of 2016

Mr.N.Jebakumar

... Petitioner in
both C.R.Ps.

Vs

Mrs.Praveena A.Jain

... Respondent in
both C.R.Ps.

COMMON PRAYER: Petitions filed under Article 227 of the Constitution of India praying to set aside the order of the learned VI Assistant Judge City Civil Court, Chennai in I.A.Nos.11777 and 11778 of 2015 in O.S.No.6158 of 2014, dated 21.06.2016.

For Petitioner
(In both C.R.Ps)

: Mr.R.Srinivas,
Senior Advocate for
M/s.Mythili Srinivas

For Respondent
(In both C.R.Ps)

: Mr.T.Srikanth

COMMON ORDER



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These two Civil Revision Petitions are filed challenging the order passed by the trial Court, dismissing the petition filed by the petitioner / defendant to condone the delay of 46 days in filing a petition seeking leave to defend the suit and the petition seeking leave to defend the suit in I.A.Nos.11777 and 11778 of 2015 respectively.

2. The respondent herein filed a suit seeking recovery of money to the tune of Rs.9,38,205/- together with interest against the petitioner. According to the respondent, the petitioner approached her for purchase of Stainless Steel Sheets, Coils, Pipes and Plates on credit basis and agreed to pay interest at the rate of 24% p.a., if payment was not made within 30 days. The said offer was accepted by the respondent and as per the arrangement, the petitioner used to place order with the respondent and she used to supply goods to the petitioner as per order. It was also stated by the respondent that she has been having transaction with the petitioner from the year 2001 onwards and the petitioner failed to pay the amount in respect of last five invoices dated 04.01.2012, 03.02.2012, 10.02.2012, 14.02.2012 and 01.03.2012. The suit was laid for recovery of money for the value of the goods supplied under the above mentioned five invoices. The suit was filed as a summary suit under the provisions



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submitted that there is no written contract to supply goods in the case on hand and hence, provisions of Order XXXVII of C.P.C. cannot be invoked to file a summary suit. He further submitted that the respondent / plaintiff failed to file any proof to show that the goods supplied as per the invoices were taken delivery by the petitioner. Therefore, according to him, there are triable issues and hence, petitioner is entitled to leave to defend. In respect of the delay, the learned Senior Counsel appearing for the petitioner submitted that summons for judgment despatched by the respondent by RPAD was received in his office, but the same was not placed in the bundle informing the lawyer. Therefore, the petitioner's counsel did not notice the same and file leave to defend petition in time.

6. The learned counsel appearing for the respondent submitted that invoice acknowledged by the petitioner can be treated as a written contract and in this regard, he relied on the judgment of the Delhi High Court in ***Indian Iron & Steel Company Limited Vs. Nada Brothers and others*** reported in **2004 (76) DRJ 208**, ***M/s.Flint Group India Private Limited Vs. M/s.Good Morning India Media Private Limited*** reported in **2017 SCC OnLine Del 7894** and ***Lucky Electrical Stores Vs. Ramesh Steel House*** reported in **1988-1-L.W. 574**.

7. Perusal of the original records received from the trial Court



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would suggest that along with the plaint, the respondent filed invoices

based on which, the suit claim was laid as plaint document Nos.1 to 5. A

perusal of the plaint documents would suggest that invoices are

accompanied by delivery note, which contains the seal of the petitioner

concern with signature. Therefore, the contention raised by the learned

Senior counsel for the petitioner, as if the respondent failed to produce

any acknowledgment for delivery of the goods, is not acceptable by this

Court on the face of the documents filed along with the plaint. The

combined reading of invoices with delivery note would suggest that there

was a written contract to supply the goods. In this regard, it would be

appropriate to refer to the decision in ***Indian Iron & Steel Company***

Limited Vs. Nada Brothers and others reported in ***2004 (76) DRJ 208***

The relevant observations reads as follows:

“8.The expression "written contract" appearing in the above referred clause does not necessarily mean a document containing detailed terms and conditions of the contract having signature of both the parties. Correspondence exchange between the parties can constitute a valid agreement. In the present case it is to be seen as to whether such an agreement came into being between the parties. It is not disputed that the plaintiff supplied different kinds of steel to the defendant by means of delivery order addressed to the defendant and the



defendant obtained delivery of the goods through authorisation letter and delivery note in pursuance to the said delivery order. The delivery order clearly detailed out the description of the goods and quantity of the goods supplied and the value of the goods and the fact whether the goods were being supplied on credit or payment or advance payment. Receipt of the goods by the defendant pursuant to the delivery order and on the basis of authorization order would clearly constitute an agreement between the parties. The question as to whether invoices or bills are "written contracts" within the contemplation of Order 37 CPC is no longer open for debate and the question stands fully settled through a catena of judgments of this Court in **M/s Punjab Pen House Vs. Samrat Bicycle Ltd. AIR 1992 Delhi 1; Corporate Voice (Pvt.) Ltd. Vs. Uniroll Leather India Ltd., 60(1995) DLT 321; Beacon Electronics Vs. Sylvania and Laxman Ltd., 1998(3) Apex Decisions (Delhi) 141 and KLG Steel Ltd. Vs. Fujitsu ICIM Ltd., 92 (2001) DLT 88** wherein it has been held that such bills or invoices are written contracts within the meaning of sub-clause(2) of Rule 2 of Order 37. From the correspondence ensued between the parties after the supply of the goods, it would be further manifest that the plaintiff supplied the goods to the defendant under an agreement. This Court has, therefore, no hesitation in holding that the present suits filed by the plaintiff for the recovery of unpaid price of the goods under Order 37 CPC are summary suits and summary procedure can be applied to their trial."



8. In ***Lucky Electrical Stores Vs. Ramesh Steel House*** reported in

1988-1-L.W. 574, this Court, while considering the scope of Order

XXXVII Rule 1 sub-rule 2 of C.P.C., observed as follows:

“The appeal was allowed and the award was restored. There is, therefore, sufficient authority to indicate that even though the invoice or the bill is not signed by the other party to the contract, as a result of the acceptance of the goods delivered in pursuance of the invoice the demand for the price of goods admittedly received by the purchaser on the basis of the invoice must be said to arise on "written contract". Even according to the defendants, they had received goods in pursuance of their order and the goods were expressly supplied to them. According to them, the amount due was Rs. 10,713.89 out of which they had paid Rs. 9,252.92. Beyond this bare statement there is nothing to show how and when such payments were made. Therefore, the defendant's vague plea with regard to the payment of Rs. 9,252.92 without disclosure of any details cannot be said to make out any triable issue. The defendants having admitted that a sum of Rs. 10,713.89 was due would undoubtedly be entitled to an opportunity to show that there was repayment. At best, they may be entitled to a conditional leave to defend on the deposit of the admitted amount.”

9. In the case on hand, the respondent produced invoices and the delivery note allegedly signed by the petitioner under his seal.

Therefore, in the light of the judgments referred above, the same would



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amount to written contract. Therefore, the contention raised by the learned Senior Counsel for the petitioner that there is no written contract for supply of the goods is not acceptable by this Court. Though it was contended by the petitioner that there was no acknowledgement by the petitioner for having taken delivery of the goods, the delivery note filed by the respondent contains seal of the petitioner along with the signature. It is not the case of the petitioner that the seal affixed in the delivery note is not that of the petitioner concern or the person signed the acknowledgement was not authorised to do so. When this question was put to the learned Senior Counsel for the petitioner, he submitted that the copies of the plaint documents served on the petitioner were illegible and the acknowledgment allegedly available in the delivery notes are not clear. The learned Senior Counsel also produced the copies of the plaint documents served to him before the Court and the acknowledgement in the said copies are not clear. If the plaint documents are not clear, the petitioner could have requested the respondent to furnish a legible copy or could have searched the original document with the leave of the Court. Therefore, there is omission on the part of the petitioner in his failure to seek legible copy.

10. As far as service of pre-suit notice is concerned, perusal of



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plaint document No.7 would indicate that pre-suit notice does not contain any acknowledgment of the consignee. Therefore, there is no proof for service of pre-suit notice on the petitioner. In the light of the plaint averment that the respondent has been having transaction with the petitioner from the year 2001 onwards and also denial by the petitioner regarding delivery of goods, this Court feels an opportunity shall be given to the petitioner to defend the suit, however with a condition. Hence, C.R.P.(PD)No.2647 of 2016, challenging dismissal of petition seeking leave to defend is allowed on condition as indicated below.

11. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that summons for judgment received by his advocate's office was not put up in the bundle informing his lawyer. It is settled law that mistake on the part of the lawyers' office should not be put against the parties. Therefore, this Court is inclined to take liberal approach, while considering the application filed by the petitioner to condone the delay of 46 days in filing the petition to defend the suit. In the light of the assertion made by the petitioner that due to the omission on the part of his advocate's office, he could not file leave to defend petition within time, this Court is inclined to condone the delay and set aside the order dismissing the condone delay petition. Hence,



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C.R.P.(PD)No.2646 of 2016, challenging dismissal of petition to condone delay in filing petition seeking leave to defend the suit is allowed.

12. In the light of the discussion made earlier, the order dismissing the petition seeking leave to defend the suit is set aside and the petitioner is granted leave to defend the suit on condition, he shall deposit a sum of Rs.3 lakhs to the credit of O.S.No.6158 of 2014 on the file of VI Assistant City Civil Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the C.R.P.(PD)No.2647 of 2016 is allowed by setting aside the order impugned in the revision. There shall be no order as to costs.

15.04.2024

NCC : Yes / No
Index : Yes / No

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To

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- 1.The VI Assistant Judge City Civil Court, Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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S.SOUNTHAR, J.
vsm

Order in
C.R.P.(NPD)Nos.2646 and 2647 of 2016

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