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C.R.P.(PD)No.2908 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.2908 of 2024

and

C.M.P.No.15514 of 2024

1. Narayanan Aravindan

2. Cronous International Pvt Limited

Flat No.7, RMS Apartment

12, Gopalakrishnan Street,

T.Nagar, Chennai- 600 017.

.. Petitioners

Vs

1.AIMIL Ltd

Dr. VSI Estate, Phase II

Thiruvanmiyur, Chennai 600 041

Represented by its Authorised

Signatory PS Radhakrishnan

National Manager-Customer Support.

2.CIDDSE Technologies Pvt Limited

#140, 2nd Floor, Rajagopalan Street,

Sri Devikarumariamman Nagar,

Valasaravakkam, Chennai- 600 081

Represented by its Directors (2-5 defendants)

3.Mohamed Jafar Imthiyaz Ahmed

4.Mr.Kanagaraj

5.Mr.Thangaraju Subash

6.Mr.Muthusamy Ganesh



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7.Mr.Manikandan Rengaraj

.. Respondents

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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.01.2024 made in I.A.No.1 of 2023 in C.O.S.No.1521 of 2022 on the file of commercial Court, Chennai and allow this Civil Revision Petition.

For Petitioner : Mr.K.Venkateswaran

For Respondent : Ms.Beena Unni

ORDER

This Civil Revision Petition arises against the order passed by the Commercial Court, Chennai, in I.A.No.1 of 2023 in C.O.S.No.1521/2022 dated 06.01.2024.

2. The civil revision petitioners are the defendants 6 and 7 in the suit. C.O.S.No.1521 of 2022 was originally presented by the 1st respondent herein before the City Civil Court, Chennai. It is an under chapter suit. The case of the plaintiff is that it had supplied materials to the 1st defendant Company of whom the defendants 2 to 5 are the



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Directors. As the supplies had been made and invoice was not honoured, several communications were sent to the defendants 1 to 5 by the plaintiff. On 14.11.2019, the 7th defendant of whom the 6th defendant is a Director, issued a cheque for a sum of Rs.7,08,000/- to the plaintiff. The plaintiff, believing that the cheque would be honoured, presented the same for collection on 14.11.2019. Unfortunately, the cheque was returned. Thereafter, the defendants sent an E-mail dated 18.11.2019 and 30.11.2019, assuring the plaintiff that the amounts would be paid to it. As it was not done, being left with no other option, the plaintiff issued lawyer's notice 03.11.2020 and 19.03.2021. The civil revision petitioners/ defendants 6 and 7 though received the notice, chose not to reply. As the plaintiff's demand remains unresolved, he presented the suit for recovery of the aforesaid sum together with interest. On the creation of Commercial court, the suit was transferred from City Civil Court, Chennai to the Commercial Court, Chennai.

3. The 6th Defendant entered appearance and filed an application seeking leave to defend. This application was numbered as I.A.No. 1 of 2023. The plea that the 6th defendant took was that since the defendants 6 and 7 had proposed to take over the 1st defendant, they had issued a



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cheque in order to discharge the liability of defendants 1 to 5. The 6th defendant further pleaded there is no privity of contract between the plaintiff and the defendants 6 and 7 and that the E-mail dated 24.10.2019, which is relied upon by the plaintiff was never sent by the said defendants.

4. The plaintiff filed a detailed counter to the same. The plaintiff pointed out that the cheque had infact been issued by the defendants 6 and 7 undertaking to discharge the liabilities of the defendants 1 to 5. The plaintiff asserted that the E mail is true and genuine and in that E-mail, the 7th defendant accepted that he is stepping into the shoes of the 1st defendant. The plaintiff urged that nothing prevented the defendants 6 and 7 from sending an E-mail to the plaintiff asking him not to present the cheque. The plaintiff pointed out that the defense is moonshine and does not deserve acceptance. The learned commercial Judge agreed with the plaintiff and dismissed the petition. Hence this revision.

5. I heard Mr. K.Venkateswaran for the civil revision petitioner and Ms. Beena Unni for the respondents.



6. Before I proceed on the merits of the case, I have to recollect the principle that had been laid down by the Supreme Court for the matters governing Order XXXVII proceedings. In ***IDBI Trusteeship Services Ltd. versus Hubtown Limited (2017 (1) SCC 568 (R.F.Nariman,J)*** the Supreme Court pointed out that there are mainly three categories of cases which arise under Order XXVII. The first category of cases where the defense is presented to the claim of the plaintiff, is so sterling in character that it deserves unconditional leave to defend. The second category are cases, where the defense is absolutely moonshine and totally improbable. In such kind of cases the defendants are not entitled to leave to defend. For the cases which fall in between the categories point out above, the court has the discretion to grant leave to defend, but on imposition of certain conditions. Remembering these principles, I approach the facts of this case.

7. It is not in dispute by the defendants 6 and 7 that they had proposed to take over the 1st defendant. It is not in dispute that the 1st defendant owed money to the plaintiff for the supplies made by the plaintiff to it. It is further not in dispute that at the time of the negotiations for taking over of the 1st defendant by the defendants 6 and



7, a cheque was issued by the 7th defendant in favour of the plaintiff for the discharge of the amounts that the 1st defendant owed to the plaintiff.

The plaintiff pleads that this was confirmed by way of an E-mail dated 25.11.2019.

8.Mr.K.Venkateswaran points out that the said E-mail was never sent by the defendant and invites our attention to para no. 9 of the leave to defend application. He pleads there is no privity of contract between between the plaintiff and the defendants 6 and 7. At this stage, I have to recollect the principles in commercial transactions in ***Lickbarrow and Anr. vs. Mason & Ors. (1787 2.T.R. 63(KB)***), in the court of kings Bench. The court held that where an innocent party suffers on account of an act of another person, who had brought about the state of affairs, then the latter is answerable to the claim of the former. If I were to apply this principle to the facts of the case, the plaintiff did not proceed as against the defendants 1 to 5 immediately on account of the assurance given by defendants 6 and 7 to the plaintiff that the cheque issued for the discharge of the liability of defendants 1 to 5 will be honoured. The plaintiff relies upon E-mail dated 24-10-2019 to claim that the defendants 6 and 7 had in fact confirmed that they would follow upon



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the cheque which had been dishonoured. Therefore, the only straw on which Mr.Venkatesaearn relies upon is that the E-mail was never sent by his clients. Yet, I cannot say there is no defense at all to the defendants. A possible defense has been taken which would require some evidence to be let in. If it requires some evidence, certainly leave to defend must be granted.

9. At the same time, I should remember that the supply made by the plaintiff to the 1st defendant is not dispute. The plaintiff claims it is an MSME (Micro, Small and Medium Enterprises) and registered as a small scale industry. Therefore to balance the interest of the plaintiff as well as the defendants, I am inclined to pass the following order.

(i) The order dated 06.01.2024 is set aside. I.A No.1 of 2023, in COS No. 1521 of 2020 will stand allowed on condition that the plaintiff deposits a sum of Rs 7,08,000/- on or before 08.01.2025.

(ii) If the said deposit is made, the learned Judge, Commercial Court is requested to try the suit as an ordinary suit subject to the usual procedure followed for commercial suits.

(iii) The learned Judge shall keep the amount deposited in an interest bearing account so that whether the suit is decreed or dismissed, respective



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parties will not suffer the consequences of the amount not generating any interest.

(iv) In case, the amount is not deposited within time granted, this civil revision petition will stand dismissed, without further notice to this court.

With the above directions, this Civil Revision Petition is allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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The Commercial Court,
Chennai.



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V. LAKSHMINARAYANAN,J.

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