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C.R.P.No.3392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3392 of 2024

and

C.M.P.No.18284 of 2024

Pramod Kumar Daga,
Proprietor,
M/s.Ambica Genpower,
No.5, Bakers Street, 1st Floor,
Chennai 600 001.

..... Petitioner

-Versus-

M/s.Insulation House,
Partnership Firm,
Rep. by its General Power of Attorney Agent
and Mandate Holder – Mr.Prakash Davey,
No.19, Narasingapuram Street,
1st Main Road, Chennai 600 002.

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair Order and Decretal Order dated 15.07.2024 made in I.A.No.1 of 2023 in O.S.No.7277 of 2022 by the learned XIX Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.R.Anantha Rama Krishna



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ORDER

This civil revision petition arises against the order dated 15.07.224 passed by the learned XIX Additional Judge, City Civil Court, Chennai, in I.A.No.1 of 2023 in O.S.No.7277 of 2022.

2. The suit in O.S.No.7277 of 2022 was filed for recovery of money for goods sold and delivered. The said suit was originally presented before this court and numbered as C.S.No.859 of 2013. Due to enhancement of pecuniary jurisdiction, the said suit stood transferred to the file of the learned XIX Additional Judge, City Civil Court, Chennai, and renumbered as O.S.No.7277 of 2022. The pleadings are complete and the matter is now at the stage of trial.

3. The defendant took out an application for rejection of plaint which was received in I.A.No.1 of 2023. After issuance of notice to the respondent/plaintiff, the learned Additional Judge dismissed the application by order dated 15.07.2024. Hence, the revision.

4. Heard Mr.N.R.Anantha Rama Krishna, learned counsel appearing for the civil revision petitioner.

5. Mr.N.R.Anantha Rama Krishna would submit that the plaint in O.S.No.7277 of 2022 is liable to be rejected on two grounds. The first ground is that the plaintiff is an unregistered partnership firm and therefore, the suit is hit by virtue of Section 69(2) of the Indian Partnership Act, 1932. The 2nd



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ground he urges is that the plaintiff has claimed to be represented by a General Power of Attorney and Mandate Holder – Mr.Prakash Davey. However, neither mandate had been filed before the court nor an application under Order III of CPC had been presented along with the plaint.

6. I have carefully considered the arguments advanced by Mr.N.R.Anantha Rama Krishna.

7. Insofar as consideration by a court in a matter of rejection of plaint is concerned, the court has to go only by the averments made in the plaint and documents filed along with the plaint alone. The defence that is raised by the defendant is absolutely irrelevant at that stage. This is because a plea for rejection of plaint is one demurrer and in such a plea, the court has to take into consideration the averments made in the plaint to be true and thereafter, proceed to deal with the matter.

8. The very first paragraph of the averments made in the plaint show that the plaintiff firm –M/s.Insulation House is a registered partnership firm. If that be the situation then, the plea of bar under Section 69(2) of the Indian Partnership Act would not arise. This is because as stated above, I have to take the statement of the plaintiff that the firm is a registered one.

9. Insofar as the the other plea that the Power of Attorney has not been



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filed, I have to state that application for Power of Attorney under Order III, Rule 2 of CPC is a curable defect and not one fatal at the time of presentation of the suit.

10. Thus, both the points urged by Mr.N.R.Anantha Rama Krishna fail and therefore, I am not inclined to admit this revision petition. It is always open to the defendant to take the defence of non-registration of plaintiff firm as well as lack of Power of Attorney at the time of arguments.

In the result, the civil revision petition is dismissed with the above observations. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The XIX Additional Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN.J.,

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