



C.R.P.(PD).No.2988 of 2022 &
C.M.P.No.16179 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

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1.The Managing Director, now the Chairman,
Ashok Leyland Limited,
No.1, Sardar Patel Road, Guindy,
Chennai – 32

2.The Plant Head – Ennore,
Vice President (Manufacturing),
Ashok Leyland Limited, Ennore,
Chennai – 600 057.

... Petitioners

-Versus-

M/s.Sakthi Caterers,
Rep. by its Proprietrix G.Banumithra,
No.18/13, 1st Floor,
Corporation Complex,
3rd Cross Road, R.A.Puram,
Chennai – 600 028.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of the Commercial court, Chennai dated 22.07.2022 in I.A.No.1 of 2019 in C.O.S.No.1053 of 2022.



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For Petitioners : Mr.D.Abdullah

For Respondent : Mr.V.Parthiban

ORDER

This Civil Revision Petition arises against the order passed by the learned Commercial Court at Chennai in I.A.No.1 of 2019 in COS.No.1053 of 2022.

2. By I.A.No.1 of 2019, the petitioners herein wanted the plaint to be rejected on two grounds. The first ground was that the claim is barred by limitation and the second ground was that the proper parties have not been brought on record in the suit. By the order impugned, the learned trial judge dismissed the application. Hence, the revision.

3. Heard Mr.D.Abdullah for the petitioners and Mr.V.Parthiban for the respondent.

4. Mr.D.Abdullah would draw my attention to the fact that the proceedings had been initiated with respect to transactions of the year 2011-12, whereas the suit came to be presented only in the year 2019. Therefore, he



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would submit that the suit is barred by limitation. On the second point, he would draw the attention of the court to the fact that the company Ashok Leyland Limited has not been made as party, but only the Managing Director and the Plant Head, Ennore have been arrayed as parties. On these two scores, he would seek for rejection of plaint.

5. Mr.V.Parthiban would bring the attention of the court to the Form 26AS that had been filed for TDS and would submit that the account was current and therefore, only from the date of last denial under Article 113 of the Limitation Act, the suit would be barred. For the said proposition, he relied upon a case in *Renganathan vs. Saravana Store, 2018 (4) CTC 419*.

6. I have carefully analysed the argument on either sides.

7. In order to reject the plaint on the ground of limitation, I am not entitled to look into the defences taken by the petitioners/defendants, who filed the application. I should go strictly by the averments made in the plaint.

8. A reading of the averments made in the plaint, in particular paragraph



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9, would show that the defendants had not reconciled the accounts despite the demand made by the plaintiff on 18.04.2012. The position, insofar as this aspect is concerned, has been settled by the judgment of this Court relied upon by Mr.V.Parthiban in Renganathan's case.

9. In the said judgment, the Division Bench was pleased to hold that where the accounts that have been maintained are running accounts, but not mutual account, the appropriate provision that would apply is Article 113 of the Limitation Act. That is to say, the cause of action would arise from the date of denial. According to Mr.D.Abdullah, the letter dated 14.04.2012 which has been filed along with the plaint would show that the request for reconciliation of accounts has been denied. However, Mr.V.Parthiban would state that the denial was much later, only in the year 2018 and immediately, they have come forward with the suit.

10. Since the limitation is a mixed question of law and fact, and where there is even a doubt as to whether the plaint is barred, the benefit of such a doubt has to be given only to the plaintiff. This is because, there is always time to the defendants, during the time of trial, to substantiate his plea.



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11. Insofar as the descriptions of the defendants are concerned, it is not fatal because the parties have understood the litigation and have proceeded further. In case of mis-description, it is always open to the plaintiff to file an application under Order 6 Rule 17 and correct the same. A plaint cannot be rejected on such a ground.

12. Further non impleading of necessary party is also not a ground to reject the plaint under Order 7 Rule 11 because it is a waivable defence in terms of Order I Rule 13. Therefore, I am not in a position to agree with the arguments of Mr.D.Abdullah. However, it is always open to the defendants to raise a plea of limitation in their written statement and I am sure that if such a plea is taken, the learned Judge will frame an issue on that ground and decide the same during the course of trial.

13. With the above observation, I confirm the order of the learned trial judge in I.A.No.1 of 2019 in COS.No.1053 of 2022 dated 22.07.2022. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : yes / no
Neutral Citation : yes / no
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V.LAKSHMINARAYANAN, J.

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To

1.The Commercial court, Chennai

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