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C.R.P.Nos.3923 & 3924 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.3923 & 3924 of 2024

1. Uma Keshav	Petitioners
2. Devina Hemdev	.. in both C.R.Ps

Vs.

1. M.K. Hariprasad	
2. M/s.Washeffex No.32, North Phase SIDCO Industrial Estate Ambattur, Chennai – 600 098.	
3. Julie Tony	Respondents .. in both C.R.Ps

Prayer in C.R.P.No.3923 of 2024: Petition filed under Article 227 of the Indian Constitution, to set aside the order dated 05.08.2024 in I.A.No.5 of 2024 in C.O.S.No.764 of 2022 pending on the file of the Principal Commercial Court at Egmore, Chennai; and

Prayer in C.R.P.No.3924 of 2024 : Petition filed under Article 227 of the Indian Constitution, to set aside the order dated 05.08.2024 in I.A.No.3 of 2024 in C.O.S.No.393 of 2022 pending on the file of the Principal Commercial Court at Egmore, Chennai

For the Petitioners
in both C.R.Ps : Mr.C.Vigneshwaran



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COMMON ORDER

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These two revisions arise against the order of the learned Commercial Court Judge at Egmore in I.A.No.5 of 2024 in C.O.S.No.764 of 2022 and I.A.No.3 of 2024 in C.O.S.No.393 of 2022.

2. C.O.S.No.764 of 2022 was originally presented before the Original Side of this Court as C.S.No.1039 of 2008. Similarly, C.O.S.No.393 of 2022 was presented as C.S.No.1136 of 2008. Due to enhancement of pecuniary jurisdiction, the suits stood transferred to the file of the City Civil Court at Madras. Subsequently, with the creation of the Commercial Court at Egmore, the suits were transferred from the City Civil Court to the Commercial Court and were renumbered as C.O.S.Nos.764 and 393 of 2022 respectively.

3. The case of the plaintiffs in both the suits is that they had supplied chemicals to the defendants. According to them, though supplies were received, payment was not made and therefore, they presented these suits. The defendants did not file their written statements before this Court, nor did they filed written statements before the City Civil Court. On being served with the summons by the



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Commercial Court at Egmore, after a lapse of fourteen years from the date of original institution of the proceedings, the defendants presented their written statements. Thereafter, the matter was posted for trial.

4. During the course of trial, the plaintiffs filed their proof affidavits. Thereafter, the plaintiffs, in each of the suits, took out applications in I.A.No.5 of 2024 and I.A.No.3 of 2024. In both these applications, the prayer was to receive the additional documents filed along with the petitions. They had invoked the provisions of Order VII Rule 14(3) of the Code of Civil Procedure, 1908.

5. On being served with the applications, the civil revision petitioners filed a counter that Order VII Rule 14(3) of the Code of Civil Procedure, 1908, is inapplicable to commercial suits and that there are no reference to the purchase orders or bills in the plaints. Furthermore, they would say that sufficient reasons have not been given in the affidavit and they had been filed with considerable delay. The learned Trial Judge allowed the applications, hence these revisions.



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6. Heard *Mr.C.Vigneswaran*, learned counsel for the civil revision petitioners.

7. *Mr.C.Vigneswaran* would plea that Order VII Rule 14(3) of the Code of Civil Procedure, 1908, is inapplicable to commercial suits. He would further state that, as per Order XI Rules (5) of the Commercial Courts Act of 2015, 'leave' could be granted only on establishing a reasonable cause for non-disclosure of filing the documents along with the plaint. That factum not existing in this case, he argues the Trial Court erred in allowing the applications.

8. He adds that the Supreme Court, in ***Sudhir Kumar Alias S.Baliyan vs. Vinay Kumar G.B.***¹ held that an application under Order XI Rule 1(5) of the Commercial Courts Act, 2015, should not receive a liberal construction as in the case of Order VII Rule 14(3). He would state that on all counts, the learned Commercial Court Judge has committed an error and therefore, the orders impugned require interference. He refers to the judgments in ***TTK Prestige Limited vs. Baghla Sanitaryware Private Limited and Ors.***² and

¹ (2021) 13 SCC 71

² CS (COMM) 281/2021; dated 07th February, 2024.



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Societe DES Produits Nestle S.A. And Anr. vs. Essar Industries and Ors.³ to press home the aforesaid points.

9. *Mr.C.Vigneswaran* is correct that Order VII Rule 14(3) of the Code of Civil Procedure, 1908, does not apply to suits which are covered by the Commercial Courts Act, 2015, by virtue of Section 16 of the Commercial Courts Act, 2015, r/w the Schedules annexed thereunder. Substantial amendments have been made as to how the suits should be produced while dealing with them under the Commercial Courts Act of 2015.

10. The very Schedule to which *Mr.C.Vigneswaran* relies upon would point out that under Order XI Rule 1(5) of the Commercial Courts Act, 2015, while the plaintiff is barred from producing any documents which were in his power, custody, control and possession and not disclosed along with the plaint, the later portion of the provision states that the same can be produced with the 'leave' of the Court. The leave, that is contemplated under Rule 1(5), softens the rigour of the first portion of the said provision.

³ (2016) 67 PTC 678



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11. A leave cannot be granted as has been liberally construed under Order VII Rule 14 (3) of the Code of Civil Procedure. Leave can be granted only when the plaintiff establishes a reasonable cause for their non-disclosure along with the plaint. It is pertinent to point out that the words are "non-disclosure". The section does not state that the leave can be granted only for documents that are pleaded in the plaint and not filed along with the plaint. The words "non-disclosure" is much wider in interpretation. By virtue of Order XI Rule 1(5), even if the plaint does not speak about the documents, if the plaintiff tenders a reasonable cause to the Court, then the Commercial Court is entitled to grant leave for the same.

12. I need not strain much with respect of the interpretation of the said provision. The very judgment that *Mr.C.Vigneswaran* has relied upon has dealt with 5 said provision at length. The Supreme Court in ***Sudhir Kumar Alias S.Baliyan*** (*supra*) has held that the rigour of Order XI Rule 1(5) does not apply when the plaintiff establishes a reasonable cause for non-disclosure. The other judgments relied upon by *Mr.C.Vigneswaran* clearly follow the position of law laid down by the Supreme Court.



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13. The reason for non-production has been pleaded in paragraph four of the affidavit. The plaintiff has pleaded that due to floods, pandemic and change in staff, he was not in a position to immediately trace the said documents. This Court can take notice that in 2015, there were floods in Chennai and the pandemic wreaked havoc between 2020-22. It is during that period that the suits were transferred from the High Court to the City Civil Court and thereafter from the City Civil Court to the Commercial Court. Natural causes are certainly reasonable grounds for non-production of documents. The law and the Court certainly do not expect the plaintiffs to perform impossibilities.

14. Here is a case where the plaintiff is running behind the defendants for the past sixteen years for the purpose of recovery of amounts for the materials that had been supplied by the plaintiffs to the defendants. As pointed out by the Supreme Court, the genuinity of the documents, which *Mr.C.Vigneswaran* pleads are suspect, should be gone into at the time of trial.

15. Suffice it to say that in these revisions, I am only concerned with whether any reasonable cause has been given by the



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plaintiffs. The cause set forth in paragraph 4 has been found to be reasonable by the learned Commercial Courts Judge. She had the advantage of seeing the parties, which unfortunately I don't. Furthermore, when the learned Trial Judge has exercised her discretion in terms of Order XI Rule 1(5), this Court would normally not interfere with the discretion exercised by this Court in exercise of power under Article 227 of the Constitution of India.

16. In light of the above discussions, these civil revision petitions stand dismissed. There shall be no order as to costs. Consequently, C.M.P.Nos.21458 and 21462 of 2024 are closed.

26.09.2024

Neutral Citation : Yes/No

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V. LAKSHMINARAYANAN, J.

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