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C.R.P.(PD).No.3550 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

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THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3550 of 2023
and C.M.P.No.22231 of 2023

S.B.P.Cold Storage Private Ltd.,
Rep.by its Director – B.Prasanna Ramanujam ... Petitioner/Plaintiff

-Versus-

G.Manogaran ... Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 16.08.2023 made in C.O.S.No.1145 of 2022 on the file of the Commercial Court, Egmore, Chennai.

For the Petitioner : Mr.R.Nandha Kumar

For the Respondent : Mr.V.Manohar
for Mr.C.Rajan

ORDER

Heard, Mr.Nandha Kumar for the Civil Revision Petitioner and
Mr.V.Manohar for the respondent.

2. This Civil Revision Petition arises against the order passed by the



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learned District Judge, Commercial Court, Egmore, Chennai on 16.08.2023 in

C.O.S.No.1145 of 2022. The C.O.S.No.1145 of 2022 was originally presented before this Court as C.S.No.744 of 2012. Even at the time of presentation of the suit, it is clearly mentioned that the suit was filed under Order XXXVII Rule 1 of Civil Procedure Code. The suit is a summary suit. Before the High Court, summons were not served in the suit, but an order of attachment had been passed by the Court in Application No.5142 of 2012 on 06.08.2013. Even in the order dated 06.08.2013, it is specifically mentioned that the suit is an under chapter suit. Due to enhancement of pecuniary jurisdiction, C.S.No.744 of 2012 stood transferred to the file of the XIX Additional City Civil Court, Chennai. It was re-numbered as O.S.No.4780 of 2020. Notice had been issued to both the parties regarding the transfer. Even before the City Civil Court, no leave to defend application has been filed by the defendant. By virtue of the creation of Commercial Courts under the Commercial Courts Act, 2015 (hereinafter referred to as 'the Act'), O.S.No.4780 of 2020 stood transferred to the file of the Commercial Court at Egmore, Chennai. Summons were served on the defendants and on 02.08.2022, a counsel entered appearance on behalf of the defendant. Instead of following the special procedure under Order XXXVII, the Court straight away passed an order directing the defendant to file his written



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statement. This mistake was noticed by the learned Commercial District Judge

on 07.11.2022, whereby he passed the following order:-

“This is a summary suit. The defendant has not get filed any application to seek the leave of this court to defend the suit. But he presented the written statement. Therefore, for maintainability of written statement, without invoking Or. 37 Rule CPC call on 09.12.2022.”

3. Thereafter, the matter was repeatedly adjourned and finally the matter was taken up on 16.08.2023. On 16.08.2023, the District Judge, Commercial Court came to a conclusion that since there is no admission made by the defendant about his liability or any denial in the reply notice, the summary suit is not maintainable. Consequently, it is directed that the suit be proceeded as an ordinary suit. Aggrieved by the same, the present Civil Revision Petition.

4. Mr.Nandha Kumar would contend that the suit having been presented as a summary suit, the defendant ought to have issued a notice of appearance which would have enabled the plaintiff to issue the summons for judgment. It is only thereafter, in case a leave to defend application is allowed with or without



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condition and thereafter, the defendant would have been entitled to file a written statement. He would draw my attention to the plaint which had been filed before this Court as early as 2012 to argue that it is a summary suit and therefore, he would plead that the order passed by the learned District Judge on 16.08.2023 be revised.

5. Per contra, Mr.V.Manohar would argue that the revision is not maintainable, by virtue of a bar under Section 8 of the Commercial Court Act (hereinafter referred to as 'the Act'). He would then urge that the procedure under Order XXXVII of CPC does not apply to Commercial Courts, in the light of the provision under Order XIII – A of Commercial Courts Act. He would then urge that there is no written contract as required under Section 2 (1) (c) (i) of the Act. Hence, he would plead that the Civil Revision Petition is not maintainable and in case this Court comes to a conclusion it is maintainable, then the order of the learned Judge deserves to be upheld.

6. I have carefully considered the submissions made by the learned counsel on either side.



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7. In so far as the objection that the Civil Revision Petition is not maintainable, I have to deal with this issue first. Section 8 of the Act bars the jurisdiction of the High Court to entertain a revision against any “Interlocutory Order” of a commercial Court. An interlocutory order means any order that is passed in the course of the proceeding in order to maintain *status quo* in the lis. See, *Arjun Singh Vs. Mohindra Kumar and Ors.* (AIR 1964 SC 993) paragraph Nos.13 and 14.

8. The order impugned in this Civil Revision Petition is not an interlocutory order, but a step in procedure for the Court to proceed further in the suit. The Court has not directed any injunction, receiver or attachment or any order in that form, in order to fall within the fold of interlocutory orders. Apart from that, the bar which Mr.V.Manohar would plead under Section 8 and 12 (3) of the Act, might apply to a statutory revision in the form of Section 115 of CPC. This being a revision invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the bar under Section 8 and 12 of the Act would not operate. Since the order is not an interlocutory order and as this is a revision under Article 227 of the Constitution of India, the preliminary objection raised by Mr.V.Manohar stands rejected.



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9. Turning to his next plea that Order XIII – A of the Act, bars Order XXXVII of CPC here too, I am not with Mr.V.Manohar. This is because, Order XIII – A sub-clause 2 itself contemplates a situation of a suit being filed before the commercial court invoking the provisions of Order XXXVII of CPC. A commercial dispute, as understood by the Commercial Courts Act, is transaction specific and not person specific. The case here relates to import of apples that were sold by the plaintiff to the defendant. In fact, Section 2 (1) (c)(ii) of the Act deals with export and import of merchandise or services. Apart from that it covers ordinary transactions by merchants including enforcement and interpretation of mercantile documents.

10. A perusal of paragraph No.7 of the plaint would show that the plaintiff pleads that a ledger account had been maintained by him for the transactions with the defendant. This ledger account was acknowledged by the defendant, accepting his liability to pay the amount to the plaintiff. Therefore, this certainly comes within the scope of commercial dispute under the Commercial Courts Act, 2015.



11. A summary judgment under Order XIII – A of the Act is different from summary suit under Order XXXVII of CPC. Under Order XIII – A of the Act, if the Court finds that the conditions as required by that order are satisfied, it enters upon a judgment without pushing the parties for trial. Under Order XXXVII, the question of trial itself would arise only after the leave to defend is granted. Therefore, By no stretch of imagination can Order XIII – A of the Act be treated as excluding Order XXXVII from the jurisdiction of the Commercial Courts created under the 2015 Act.

12. A perusal of the daily status of this case as uploaded by the Commercial Court at Chennai, makes it clear that on 02.08.2022 there was no adjudication by the Court treating the suit which had been filed as “chapter under” suit as a regular suit. This situation gets clarified by the adjudication dated 07.11.2022, when the learned District Judge, Commercial Court at Chennai, finds that the suit is summary suit and he would decide on the maintainability of a written statement filed with an application under Order XXXVII of CPC at a later date. The impugned order has merely complied with the order of the learned Judge with the previous order of the learned Judge on 07.11.2022. The impugned order neither holds that the suit was not a summary



suit nor does it reveal any application of mind by the Court treating a suit as an ordinary suit.

13. The learned Judge has proceeded on to the merits of the case by referring to a Judgment in *M.Yuvaraj Vs. Adhiseha Rao* (2022 3 Law Weekly 787). A perusal of that judgment shows that the learned trial Judge in the facts of that case had treated the summary suit as an ordinary suit. The plaintiff in that case, aggrieved by such treatment, preferred a revision before this Court. This Court specifically held that where there is a denial of the suit claim then the Court will treat it as an ordinary suit. The denial seems to be in that particular case, even taken in the reply notice. The said facts are fundamentally different from the case presented before me. As discussed above, the transaction arose between two merchants and it is borne out by a document viz., ledger account. The plaintiff has pleaded that the ledger had also been acknowledged by the defendant. Therefore, the verdict in *Yuvaraj's case* (cited supra), does not come to the rescue of the defendant.

14. In the light of the above discussion, the Civil Revision Petition stands allowed with the following directions:-

(i) The Order of the learned District Judge, Commercial Court, Chennai, dated 16.08.2023 in C.O.S.No.1145 of 2022 is set aside;



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(ii) The Commercial Court at Chennai shall treat the C.O.S.No.1145 of

2022 as a summary suit;

(iii) Since time had already lapsed on account of the dispute between the parties that whether the suit is summary suit or commercial suit, the defendant will be entitled to give notice of appearance within a period of 10 days from today;

(iv) The learned District Judge, Commercial Court, Chennai, shall thereafter follow the procedure under Order XXXVII strictly.

20.08.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking / Non Speaking Order

To

The District Judge
Commercial Court
Egmore, Chennai -08.



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V.LAKSHMINARAYANAN, J.,
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