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C.R.P.No.3534 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.3534 of 2022

and

C.M.P.No. 18796 of 2022

M/s. Sri Narasu's Coffee Company Private Limited,
16, Court Road, Johnsonpet,
Hasthampatty P.O., Salem – 636 007.
Represented by its Managing Director,
Mr.P.Sivanantham

... Petitioner

Versus

M/s. Narasu's Saarathy Enterprises Private limited,
16A, Court Road, Johnsonpet,
Hasthampatty P.O., Salem – 636 007.
Represented by its Managing Director,
Mr.M.V.Balasubramaniam

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to allow this civil revision petition and set aside the docket order dated 01.08.2022 made in C.O.S.No. 21 of 2022 granted by the Commercial District Court, Salem.

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C.R.P.No.3534 of 20__



For Petitioner : Mrs.S.Subashiny
For Respondent : Mr.K.Sugumaran

ORDER

This Civil Revision Petition has been preferred as against the order passed by the learned District Judge, Commercial Court, Salem dated 01.08.2022 in C.O.S.No.21 of 2022, wherein the Commercial Court has passed order to receive the written statement filed by the respondent herein.

2. The short facts necessary to dispose of this petition are as follows:-

The petitioner has filed a Commercial suit in O.S.No. 21 of 2022 against the respondent herein. The respondent filed a written statement on 01.08.2022. The Trial Court by invoking the Proviso clause to Sub Section (4) of Section 15 of Commercial Courts Act, received the written statement beyond the period of 120 days. Challenging the said order, the present petition has been filed.

3. The learned counsel appearing for the petitioner would contend that he has filed a commercial suit in O.S.No. 21 of 2022 on the file of Commercial Court, Salem under the Trademarks Act. Initially, the suit was filed before the



Principal District Court as Commercial Suit and thereafter Dedicated Commercial Court was constituted, hence the suit was transferred to the Dedicated Commercial Court, Salem. Before the Principal District Court, the respondent has not filed a written statement within a limitation period of 120 days. As per the Commercial Courts Act, the respondent ought to have filed a written statement on or before 24.07.2021. However, the respondent has failed to file Written Statement and the case was adjourned to several days from 31.03.2021 by giving sufficient opportunities. The respondent/defendant ought to have filed a written statement on or before 16.06.2021. The respondent miserably failed to file the written statement. While so, when the matter came up for hearing on 01.08.2022 after transfer to the Dedicated Commercial Court, the respondent filed written statement and the same was received by the Trial Court, in spite of the objections raised by the petitioner. The Trial Court has grossly erred in receiving the written statement after the period of limitation. Hence, the order passed by the Trial Court by receiving the written statement is against the law and it is liable to be set aside.



4. To support his contention, he relied on the judgments in (i) ***Chennai Ananda Bhavan vs. Adyar Ananda Bhavan Sweets & Snacks*** Rep. by its Partner K.T.Venkatesan reported in ***2019 SCC Online Mad 6576*** (ii) ***Ramanan Balagangatharan Vs. Rise East Entertainment Private Limited***, rep by its Authorized Signatory Easwara Chandra Vidyasagar Pentala reported in ***2022 SCC Online Mad 1300*** (iii) ***Pankaj Ravjibhai Patel Trading as Rakesh Pharmaceuticals Vs. SSS Pharmachem Private Limited*** reported in ***2023 SCC Online Delhi 7013*** (iv) ***Shivnarayan Sabu Vs. Sabu Trade Private Limited***, Rep. by its Director, Vishal Sabu in ***C.R.P.No. 2943 of 2022*** on the file of this Court.

5. The learned counsel appearing for the respondent would contend that originally the case was filed before the Commercial Court, Salem thereafter transferred to the Court of Dedicated Commercial Court, Salem. Since the case is transferred to the Dedicated Commercial Court, as per the Proviso Clause of Sub Section 4 of Section 15 of Commercial Courts Act, Rule 1 of Order V of the Code of Civil Procedure shall not apply to such transferred suit or application and the Court may, in its discretion, prescribe a new time period



within which the written statement shall be filed. Therefore, based on the above said provision, the Trial Court has received the written statement apart from that the suit itself is not a commercial suit and the value is only mentioned as Rs.12,000/-. Therefore, the Commercial Courts Act itself is not applicable to the present case, therefore the Trial Court has passed a reasoned order and the present petition is liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.

7. Upon hearing both sides and perusing the records, the point for determination in this petition is: **Whether the order passed by the Trial court is sustainable or not?**

8. In this case, there is no dispute that initially the suit has been filed as Commercial Suit, though the specified value is less than three lakhs, however the case was pending before the District Court which was designated as Commercial Court and thereafter transferred to the Court of Dedicated



Commercial Court. Admittedly, the respondent has not filed any written statement within a period of limitation.

9. As per the proviso of Order V, Rule 1, in sub rule (1) of Commercial Courts Act, where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. Therefore, as per the Commercial Courts Act beyond 120 days, the Court has no right to receive the written statement and the defendants have forfeited the right to file written statement.

10. In the case on hand, according to the petitioner, the suit is



Commercial Suit and thereby beyond 120 days, the Court has no power to receive the written statement. There is no doubt that the case was transferred from the Commercial Court, Salem to the Dedicated Commercial Court Salem and thereafter the Dedicated Commercial Court has received the written statement as per the proviso of Section 15(4) of Commercial Courts Act. Section 15(4) of Commercial Courts Act is extracted hereunder:-

“Section 15(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 3 [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.”

11. As per Section 15(4) of proviso Clause, the Commercial Court has power to fix a time to receive the Written Statement.

12. In the present case also, the case has been transferred from the Commercial Court, Salem to Dedicated Commercial Court, Salem. As rightly,



contended by the learned counsel appearing for the petitioner that once the suit is instituted under the provisions of Commercial Courts Act, the respondent ought to have filed the written statement within a period of 120 days as provided under Order V Rule 1 in Sub Rule 1 of proviso of C.P.C.

13. Now the question would arise whether the Section 15(4) would be applicable to the suits which were already registered as Commercial suits and later transferred to Dedicated Commercial Court or not?

14. The answer is as per Section 15(2), it is clear that *All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court: Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).*



15. Therefore prior to the constitution of Commercial Court, any suits pending before the Courts which are coming under the specified value in commercial nature have to be transferred to the Commercial Court. In the case on hand, the case was already registered as Commercial in nature therefore Section 15 sub clause (4) Proviso would not be applicable to the cases transferred from one Commercial Court to another Commercial Court. However, in the case on hand, the specified value is only fixed as Rs.12,000/-. As per the Section 2(xvii) of the Commercial Courts Act, the trademarks, copyright, patent and design are comes under the nature of Commercial Dispute. As per the Section 6 of Commercial Court Act “*The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.*” Therefore, the Commercial Courts have power to try the Commercial dispute of a specified value.

16. The specified value has been mentioned in section 2(i) of the Commercial Court. As per the act, “*Specified Value*”, in relation to a



commercial dispute, shall mean the value of the subjectmatter in respect of a suit as determined in accordance with section 12 1 [which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government. Therefore in order to attract the jurisdiction of the Commercial Court under Section 6, there are two conditions, the first condition is there should be a commercial dispute, the second condition is a specified value. The Commercial dispute has been defined in Section 2(xvii) and in this case also, the nature of suit is falling under Commercial nature. The specified value is not less than three lakhs. The second condition has not been attracted in this case and the value in this case has been mentioned as Rs.12,000/-. In this case, the petitioner in the plaint para 53 specifically mentioned the value of the suit is Rs.12,000/- and the value of the suit for the purpose of Court fee and jurisdiction is Rs.12,000/-. Therefore from the above, it is clear that the value of the suit is below the specified value specified under the Commercial Courts Act. Therefore, though the dispute is a Commercial dispute to attract the jurisdiction of Commercial Court the specified value is less than the value mentioned in Section 12 of the Commercial Courts Act.

17. In this context, it is relevant to refer the judgment of the Division



Bench of High Court of Delhi in the case of ***Pankaj Ravjibhai Patel Trading***

as Rakesh Pharmaceuticals Vs. SSS Pharmachem Private Limited reported

in ***2023 SCC Online Delhi 7013***, wherein the Hon'ble Division Bench of Delhi

High Court has passed a order in Para 27 and 33 are extracted hereunder:

“27. We also find ourselves unable to approve the direction for transfer of all pending IPR suits presently laid before District Judges (Non Commercial) to be placed before the Commercial Courts in Delhi. The said direction clearly flies in the face of the primordial conditions statutorily created by the CCA. In our considered view, unless the twin conditions of commercial dispute and specified value are satisfied, a suit cannot be tried by a commercial Court. The directions formulated in Vishal Pipes and embodied in Para 66 (iv) and (v) thus clearly distort the distribution of matters between commercial and non-commercial courts as statutorily ordained. In fact, if those directions were to be affirmed, they would operate so as to create and confer jurisdiction on commercial Courts contrary to the qualifying criterion as laid in place by the CCA.

33. We thus come to conclude that while it would be open for the competent court to examine the declared specified value and the value ascribed to the reliefs claimed in an IPR suit if it be pegged at below Rs. 3 lakhs, the issue of undervaluation would have to be evaluated based on the facts of each case. The aforesaid exercise can be legally undertaken by the competent court itself and such matters need not be transferred to commercial courts for the aforesaid purpose.”

18. As per the judgment of the Hon'ble Division Bench of Delhi High Court, unless the twin conditions of Commercial disputes and specified value



are satisfied, a suit cannot be tried by a Commercial Court. In the case on hand also the 1st condition that the dispute is a commercial dispute under Section 2(xvii) of Commercial Courts Act, has been fulfilled, but the 2nd condition that the specified value above 3 lakhs as per Section 12 of Commercial Courts Act is not fulfilled. Therefore, the Commercial Court has no jurisdiction under Section 6 of the Act. The District Court, Salem at the time of entertaining the suit has not verified the specified value and the respondent also has not raised any objection before the Commercial Court in respect of maintainability of the suit before the Commercial Court, since it is a value of less than 3 lakhs as specified in the Act. Therefore, the receipt of written statement by the Trial Court under Section 15 of provision of Sub Section 4 is not correct. However since the suit is not comes under the Jurisdiction of Commercial Court, the receipt of written statement by the Trial Court is upheld on the ground that the suit is not comes under the Jurisdiction of Commercial Courts Act. It is the duty of the Courts to verify as to whether the suits is valued properly and if the suit is undervalued then the Trial Court can direct the plaintiff to rectify the mistakes and to value the suit properly. As far as the suit relating to Commercial nature particularly IPR and Trademarks



suits, the Courts have to be vigilant while examining the plaint for valuation. If the valuation is less than 3 lakhs then the Commercial Courts have no jurisdiction to entertain the suits as Commercial Suit.

19. However, considering the specified value mentioned in the suit and the Trial Court also failed to verify the specified value at the time of numbering the suit. It is for the Trial Court once again to verify whether the suit is under valued or not and to decide the case in accordance with law. As far as judgments relied by the petitioner are concerned, they will not be applicable to the present facts of the case, because in this case the specified value is less than 3 lakhs and it is for the Trial Court to decide the same thereby the said judgments will not be applicable to the present facts of the case. If the case is correctly valued and comes under the specified value as per the Commercial Courts Act then the Trial Court can try the same in accordance with law, if the value is less than specified value then return the same to the Competent Court in accordance with law.

20. With the above said observations, the Civil Revision Petitions is



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dismissed. Consequently, connected miscellaneous petition is closed. No cost.

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To

The Commercial District Court, Salem.

P.DHANABAL.J.,

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