



C.R.P.(PD).No.4271 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4271 of 2024
and C.M.P.No.23749 of 2024

M/s.Daily Traders
Represented by its proprietor
Anwar Naseem Banu @ Naseem Banu .. Petitioner

Versus

M/s.Kids World
represented by its sole proprietor,
Kamlesh Jain .. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order passed in I.A.No.4 of 2024 in C.O.S.No.197 of 2023, dated 03.08.2024 on the file of the Additional Commercial Court, Egmore at Chennai.

For Petitioner : Mr.M.Sunil Kumar

ORDER

This Civil Revision Petition arises against the order passed by the Additional Commercial Court, Egmore in I.A.No.4 of 2024 in C.O.S.No.197 of 2023, dated 03.08.2024. By the impugned order, the learned Commercial



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Judge allowed the application filed under the Order XXXVII Rule 3 of the Code of Civil Procedure, but, with certain conditions. Aggrieved by the said conditions, the defendant preferred this Civil Revision Petition.

2. The plaintiff seeks for recovery of a sum of Rs.11,17,640.80 ps together with interest at the rate of 24% per annum on the principle debt of Rs.8,79,080/-. It is the case of the plaintiff that on 10.10.2019, the defendant placed orders for supply of baby products which was done on 14.10.2019. In pursuance to the purchase order, on 18.10.2019, the plaintiff supplied materials to the defendant. The last of transactions was on 18.10.2019. As there were defaults that were committed by the defendant, the plaintiff issued a lawyer's notice on 23.11.2020. Since there was no response, he presented C.O.S.No.132 of 2021 on the file of the Commercial Court at Bangalore. The said suit was returned for want of territorial jurisdiction. Hence, he presented C.O.S.No.197 of 2023 as an under chapter suit.

3. On being served with the summons for judgment, the defendant took out an application for leave to defend. The said application was



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numbered as I.A.No.4 of 2024. The pleas that were raised by the defendant were that

(i) the same suit, as returned by the Karnataka Court, was not represented;

(ii) the original claim was Rs.11,32,640.80 ps, whereas, the present claim is Rs.11,17,640/-;

(iii) the bills are bogus and fabricated and the defendant is not liable to pay any amount to the plaintiff and

(iv) as the last of the invoices was on 18.10.2019, the suit presented before the Commercial Court in C.O.S.No.197 of 2023 is barred by time.

4. A counter was filed by the plaintiff denying the aforesaid averments. The learned Judge heard both the parties and came to a conclusion that the defendant is entitled for leave to defend on deposit of Rs.8,79,080/- on or before 19.08.2024.

5. Heard Mr.M.Sunil Kumar, learned Counsel for the civil revision petitioner.

6. I do not have to labour much on the position of law. It has been settled by the Supreme Court in *I.D.B.I Trusteeship Services Limited Vs.*



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Hubtown Limited., (2017) 1 SCC 568. Hon'ble Mr. Justice R.F. Nariman,
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speaking for the bench, held that if a defence is sterling in character, the defendant would be entitled to unconditional leave to defend. He pointed out that if the defence is absolute moonshine, then, the defendant is not entitled to leave at all. In case, the defence falls between the two extremes pointed out above, the defendant will be entitled to leave subject to certain deposits which the Court will decide at its discretion depending upon the facts and circumstances of the case. The learned Judge specifically held that in case, the amount is admitted, the defendants would have to deposit the admitted amount. Remembering these principles, I approach the facts of the present case.

7. The relationship between the parties is not in dispute. The plaintiff supplied baby products from Bangalore to the defendant in Chennai. He invoked the jurisdiction of the Bangalore Court and presented a suit. The said suit was returned for want of territorial jurisdiction. The plea of the defendant that instead of representing the returned suit, since a fresh suit was filed and therefore, it is not maintainable, is not acceptable to me. This



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is because, the plaintiff is entitled to bring forth a suit before the Commercial Court at Chennai as long as it is within the period of limitation.

8. The learned Judge pointed out that the last of the supplies by the plaintiff to the defendant was on 18.10.2019. Therefore, the plaintiff has time to present the suit till 17.10.2022. However, he presented the suit on 19.06.2022 and hence, it is well within the time. Therefore, the plaintiff is entitled to file a fresh suit on the basis of the original cause of action of supply.

9. The learned Judge, considering the fact that there is no agreement between the parties to pay 24% per annum, rejected the claim of the plaintiff on that score. He directed the defendant only to deposit a sum of Rs.8,79,080/- which is the principle amount. The supply from the plaintiff to the defendant, having been demonstrated by the suit invoices as well as by the G.S.T payments made by the plaintiff and the G.S.T details that were produced by the plaintiff as the document No.10, I do not find any reason to take a different view from that of the learned Trial Judge.



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10. In the light of the above discussion, despite the vehement pleas of Mr.M.Sunil Kumar, I am not in a position to accept the same. The order of the Additional Commercial Court at Egmore does not require to be revised. The order stands confirmed.

11. The learned Judge granted time to the defendants to deposit the amounts by 19.08.2024. As the defendants were pursuing this Civil Revision Petition, I am inclined to extend the time for deposit till 30.11.2024. It is made clear that on such deposit, the same shall be kept in an interest bearing account, so that, in case the defendant succeeds, they would be entitled to the said amount without any loss of interest. Further, if the defendant succeeds in getting the suit dismissed, then, the Court should ensure that the costs are imposed on the plaintiff for having made the defendant deposit the said amounts.

12. With the above observations, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes/no
Speaking order/Non-speaking order



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Neutral Citation : yes/no
grs

To

The Additional Commercial Court,
Egmore at Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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