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C.R.P.(PD).No.4270 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.4270 of 2024
and C.M.P.No.23743 of 2024

1. M/s.Kans Wedding Centre, (Partnership firm)
Represented by its Managing Partner,
Naushad Niyaz Noorsha @ K.A.Niyaz
2. Naushad Niyaz Noorsha @ K.A.Niyaz .. Petitioners

Versus

1. M/s.Kids World
represented by its sole proprietor,
Kamlesh Jain
2. Anwar Naseem Banu @ Naseem Banu .. Respondents

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.196 of 2023, dated 03.08.2024 on the file of the Additional Commercial Court, Egmore at Chennai.

For Petitioner : Mr.M.Sunil Kumar



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ORDER

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2. C.O.S.No.196 of 2023 is an under chapter suit. It was filed on the basis of the commercial invoices that were issued between the plaintiff and the defendants. The suit claim is Rs.52,83,976.60 ps. The plaintiff also claimed interest at the rate of 24% per annum on the aforesaid amount till the date of realization.

3. Being an under chapter suit, the defendants took out an application under Order XXXVII of the Code of Civil Procedure. The defendants pleaded that C.O.S.No.196 of 2023 was presented before the Commercial Court at Bangalore as C.O.S.No.133 of 2021 and the said suit was returned on 04.04.2022 directing the plaintiff to represent the suit before the competent Court. The defendants pleaded that instead of representing the suit, the plaintiff presented a fresh suit seeking the aforesaid reliefs.

4. The second plea of the defendants is that the parties never agreed to pay the interest at the rate of 24% per annum. Thirdly, the defendants



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pointed out that the claim in C.O.S.No.133 of 2021 was Rs.53,08,976/-, whereas, when it came before this Court, the plaintiff claimed a sum of Rs.52,83,976.60 ps. According to the defendants, in their books of accounts, it is a "nil" statement and a calculation of total invoices comes to only Rs.34,68,436/- and not the figure calculated by the plaintiff as Rs.37,74,269/-. They further added that as the products of the plaintiff were not up to the mark and goods, to the tune of Rs.10,50,000/-, were ready to be returned, yet, the plaintiff did not take return of the same. An additional plea was that the parties agreed to square up an amount of Rs.3,26,449/- and a sum of Rs.8,54,773/-, being the purchase price difference between the year 2019 and 2020. On these and other grounds, they pleaded for unconditional leave to defend.

5. The plaintiff filed a counter to the said application. He pointed out that he could not represent the suit in C.O.S.No.133 of 2021 which had been returned by the Commercial Court at Bangalore in the Commercial Court at Chennai on account of the fact that in the case of the previous suit, the Court fees was paid to the credit of the state of Karnataka and that would not be acceptable for a suit presented in the state of Tamil Nadu. He further



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pointed out that as per the invoices, the defendants are liable to pay Rs.37,74,269/- and pleaded that the fact that the defendants left with goods worth of Rs.10,50,000/-, is utterly untenable as more than two years lapsed from the date of sale and there was no mutual agreement as regards the alleged price difference for the year 2019-2020.

6. On the side of the defendants, Ex.P1 to Ex.P3 were marked. The learned Trial Judge, on consideration of the facts and circumstances of the case, ordered the defendants to deposit a sum of Rs.22,87,049/- on or before 19.08.2024. Aggrieved by the same, the present Civil Revision Petition.

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

8. Mr.M.Sunil Kumar pleads that he made out a defence for grant of leave and that basing on the circumstances of the case, the learned Judge should have granted unconditional leave and even if he wanted to impose a condition, he should have called upon the defendants to deposit an amount of less than Rs.5,00,000/- and not the huge amount of Rs.22,87,049/-. He



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drew my attention to the points that he raised in the page Nos.54 to 56 of the typed set of papers and states that as these are triable issues, he is entitled for unconditional leave to defend.

9. I have carefully considered the submissions of Mr.M.Sunil Kumar.

10. 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. Hubtown Limited., (2017) 1 SCC 568***. Hon'ble Mr.Justice R.F.Nariman, 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.



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11. The relationship between the parties is not in dispute. The plaintiff supplied baby products from Bangalore to the defendants 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 defendants 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 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.

12. The learned Judge pointed out that the last of the supplies by the plaintiff to the defendants was on 28.02.2020. Therefore, the plaintiff has time to present the suit till 27.02.2023. However, he presented the suit in the month of October, 2022 itself. Therefore, the plaintiff is entitled to file a fresh suit on the basis of the original cause of action of supply.

13. Insofar as the second plea of Mr.M.Sunil Kumar, the goods worth of Rs.10,50,000/- were ready with the defendants to be returned and it is the plaintiff who did not take back the same, the defendants did not plead anywhere in the application for leave to defend that they called upon the



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plaintiff to take back the goods and the plaintiff refused to do so. Being a commercial transaction, I do not expect the parties to rush to the Court with a litigation.

14. Merchants have their own means of resolving disputes. They approach the Court only when no other alternative remedy is available to them. The defendants should have shown some communication between them and the plaintiff that the goods worth of Rs.10,50,000/- were utterly worthless and therefore, they should be taken back by the plaintiff. The only plea is that they were unsold goods and therefore, the plaintiff is liable to take them back. If the goods were supplied in the year 2019 and the defendants did not sell the same, the mistake in non-performance of the sale does not lie with the plaintiff, but, with the defendants.

15. Be that as it may, as the defendants themselves admitted that the goods worth Rs.10,50,000/- were lying with him, he has to necessarily deposit the said amount to the credit of the suit. By making such deposit, the plaintiff is not going to lay his hands on the said amount and it will only



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be lying in the Court and shall be disposed of subject to the result in the proceeding.

16. A perusal of the order of the learned Judge in paragraph No.9 shows that the learned Judge took pains to reconcile the invoices and reject the case of the plaintiff for Rs.37,74,269/-, but, has found that the invoices add up to only Rs.34,68,436/-. In addition, he did not call upon the defendants to deposit the interest amount as he agreed with the defendants plea that as there is no agreement between the parties to pay interest of 24% per annum. The learned Judge also agreed with the defendants that there were credit notes in their favour to a tune of Rs.3,26,499/- and yet again accepted the case of the defendants that there is a difference in purchase amount as per Ex.P3 which he rounded off to Rs.8,54,778/-. In other words, as against the claim of Rs.34,68,436/-, the learned Judge gave credit to Rs.3,26,499/- and Rs.8,54,778/- and arrived at a figure of Rs.22,87,049/-. The reasons given by the learned Judge is in accordance with the principles for grant of leave under Order XXXVII Rule 4 of the Code of Civil Procedure.



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17. 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.

18. 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 defendants succeed, they would be entitled to the said amount without any loss of interest. Further, if the defendants succeed in getting the suit dismissed, then, the Court should ensure that the costs are imposed on the plaintiff for having made the defendants depositing the said amount.

19. 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
Neutral Citation : yes/no
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V.LAKSHMINARAYANAN, J.

grs

To

The Additional Commercial Court,
Egmore at Chennai.

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