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C.R.P.No.4057 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4057 of 2023
and CMP.No.24796 of 2023

Daejung Moparts Private Limited
No.6, Sengundram Industrial Estate
Melrosapuram, S.P.Koil - 603 204
Tamil Nadu.

... Petitioner

Vs

Crystal Marketing
Registered Partnership Firm
Represented by its Partner
Mr.P.Raj N.Narayanan
S/o. Late Parameswaran Nair
Akhil Apartments, III Floor
108, Kamaraj Avenue, Adyar
Chennai - 600 020.

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 07.10.2023 passed in I.A.No.1 of 2023 in C.O.S.No.175 of 2023 on the file of the Commercial Court, Egmore, Chennai.



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For Petitioner : Mr.Pranava Charan M.G

For Respondent : Mr.K.M.Aasim Shehzad
for M/s.Akhil Bhansali

ORDER

This revision revolves around a very narrow compass. The parties would be referred to by their rank in the suit.

2.1 The respondent as plaintiff presented COS.No.175 of 2023 on the file of the Commercial Court, Egmore, Chennai. This suit is for recovery of money for the goods sold and delivered. The plaintiff-company made a claim for Rs.79,72,368/-. It was filed as summary suit invoking the provisions of Order XXXVII of CPC. Notice was issued in the suit for calling upon the defendant to appear. The date was fixed on 27.07.2023. On 27.07.2023, the defendant entered appearance through a counsel and filed his vakalath. The case stood adjourned to 01.09.2023. On 01.09.2023, a memo was filed by the plaintiff stating that the defendant had not given a notice of appearance, and therefore the provisions of Order XXXVII Rule 3(1) of CPC has not been complied with.



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2.2 In response to this memo, notice of appearance was filed by the learned counsel for defendant on 05.09.2023. He took out an application to recall the order dated 01.9.2023, whereby the Court has recorded the fact that the defendant had not filed the notice of appearance within the time limit, and he also sought for rejection of memo filed by the plaintiff. This application came to be dismissed, against which the present revision.

3. Heard Mr.Pranava Charan M.G. for the petitioner/defendant and Mr.K.M.Aasim Shehzad for the respondent.

4. Mr.Pranava Charan refers to a judgment of the Delhi High Court in ***Pal Jain and Ors. Vs Mulakh Raj*, AIR 1987 Delhi 21**. The said judgment has been approved by Hon'ble Mr.Justice Jiwan Dass Kapoor in ***NEPA Ltd Vs. Media Asia Pvt Ltd.*, AIR 2020 Delhi 128**. A view had been taken by that Court on Order XXXVII. It reads as follows:

"The notice of entering appearance may not have been given separately but the very fact that presence of the



counsel for the defendants as well as the counsel for plaintiff is noticed in the order sheet, it show that the plaintiff had the notice of entering appearance on behalf of the defendants. The only fault which lay on the part of the defendants was that they did not file separately the address for service."

5. A perusal of this view would persuade me to conclude that on the date of the first hearing when the defendant has entered appearance in the suit through his counsel and has filed the vakalatnama which discloses the address of service, a separate notice of appearance may not be necessary. If the said principle is applied to the facts of this case, on 27.07.2023, when counsel for both the parties were present, a vakalath had been filed disclosing the address of the learned counsel for the defendant. Therefore, the plaintiff should have seized of this opportunity and should have issued the summons of judgment immediately thereafter. The procedural law under Order XXXVIII is meant for quick disposal of the suit which comes within the scope of that chapter. Unfortunately, as this procedural wrangles that has been intervened, the Court is called upon to decide on procedural issues instead of proceeding further with merits of the case.



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6. In the light of the above discussion, the revision is allowed and the order passed by the Commercial Court, Chennai in I.A.No.1/2023 in COS.No.175 of 2023 is set aside with the following directions :

- i. The filing of vakalath on 27.07.2023 will be treated as notice of appearance by the defendant to the plaintiff.
- ii. The plaintiff will serve summons for judgment to the learned counsel for the defendant on or before 12.06.2024.
- iii. The defendant is granted ten (10) days time from the date on which he received the summons for judgment, for him to take steps for leave to defend. In case, if the defendant does not file an application within the ten days time, his right will stand forfeited.

7. Mr.K.M.Aasim Shehzad would state that the defendant is a foreign entity with no assets in India, and therefore, an order of attachment should be passed as against the said defendant for having dragged on the proceedings. On an enquiry, he would state that before the learned Presiding Officer of the Commercial Court, the plaintiff had taken out an application for garnishee and that application was dismissed as withdrawn.



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9. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index:Yes/No

Internet : Yes / No

Speaking order / Non-speaking orders

To:

1.The Judge
XX Assistant City Civil Court, Chennai.

2.The Section Officer
VR Section, High Court, Chennai.

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V.LAKSHMINARAYANAN,J.

ds

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