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C.R.P.(PD)No.4216 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4216 of 2024
and C.M.P.No.23369 of 2024

Sunil Anand, Proprietor
M/s.SBA Hospitality,
No.22, Andiappa Gramani Street,
Royapuram, Chennai-600 013.
(as per cause title)

Also at
No.154, Narayanas Arihant Ocean Towers,
Wallajah Road, Police Quarters,
Triplicane, Chennai-600 005.

.. Petitioner

Vs

S.M.Balaji, Proprietor,
M/s.India Kitchen Equipments,
No.62, Apparsamy Koil Street,
Tiruvottiyur, Chennai-600 019.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 30.09.2024 in I.A.No.1 of 2021 in C.O.S.No.933 of 2022 on the file of the Additional Commercial Court, Egmore, Chennai.



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For Petitioners : Mr.R.Harikrishnan

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ORDER

This civil revision petition arises against the order of the learned Additional Commercial Judge at Egmore, Chennai, in I.A.No.1 of 2021 in C.O.S.No.933 of 2022 dated 30.09.2024.

2. The civil revision petitioner is the defendant in the suit. C.O.S.No.933 of 2022 was originally presented before the City Civil Court at Chennai as O.S.No.6146 of 2021. The plaintiff claims that he is a manufacturer of kitchen equipments. The plaintiff alleges the defendant placed orders on him for supply of equipments. Equipments were supplied under various invoices amounting to a value of Rs.10,28,358/-. The defendant, in partial discharge of the said amount, had paid a sum of Rs.3,22,440/- leaving a balance of Rs.7,05,918/-. Despite the demands made by the plaintiff, as the defendant did not honour the same, the plaintiff was constrained to present the aforesaid suit.

3. After creation of the Commercial Courts at Egmore, O.S.No.6146 of 2021 stood transferred to the file of the Additional



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Commercial Court at Egmore and was re-numbered as C.O.S.No.933 of 2022.

4. Being an under chapter suit, even while the suit was pending before the City Civil Court at Madras, the civil revision petitioner/defendant had filed an application seeking for leave to defend under Order XXXVII of the Code of Civil Procedure, 1908.

5. The plea of the defendant is that the supplies had been made by the plaintiff to one SBA Hospitality, an entity with which he has absolutely no connections. He pleads that SBA Hospitality is a partnership firm in which he is neither a partner nor a mandate holder. The defendant further urges that as the suit has been filed against a wrong person, he should be granted unconditional leave.

6. A counter was received from the respondent/plaintiff. The learned Judge proceeded to grant leave to defend on the condition that the defendant shall deposit the alleged outstanding of Rs.7,05,918/- on or before 17.10.2024 and directed the matter to be called on 18.10.2024. Aggrieved by the same, the present civil revision petition has been presented.



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7. Mr.R.Harikrishnan taking me through the partnership deed as well as the invoices, argues that there is no connection between the civil revision petitioner and the transaction said to have been entered into between the petitioner and SBA Hospitality. He urges that the suit, having been laid against a person, who is totally unconnected with the transaction, should fail. He further points out that this gives a rise to the triable issue and the plaintiff is entitled to unconditional leave to defend.

8. I have carefully considered the submissions of Mr.R.Harikrishnan and gone through the records.

9. A perusal of the plaint shows that the plaintiff has produced a statement of accounts for the transactions entered into between the plaintiff and SBA Hospitality. The statement of accounts shows that a part payment had been made towards discharge of the claim made by the plaintiff. If I were to accept the submissions of Mr.R.Harikrishnan, then I only have to appreciate the charitable nature of the civil revision petitioner for proceeding to discharge the amounts for which he is neither liable nor connected with. When the defendant admits a business relationship with the plaintiff for purchase of materials, then the burden



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lies on him to prove that it was not for a transaction as alleged by the plaintiff in the suit. That being a triable issue, the learned Judge rightly came to a conclusion that the plaintiff is entitled to leave.

10. The Supreme Court in ***IDBI Trusteeship Services Limited v. Hubtown Limited, (2017) 1 SCC 568*** speaking through Mr. Justice R.F.Nariman has laid down grounds on which leave to defend has been granted. In case the defence is of sterling character, the defendant would be entitled to unconditional leave. In case the defence is absolute moonshine, then no leave must be granted. If the defence raised falls between these two extremes, then the defendant would be entitled for conditional leave to defend.

11. That being the position of law, the case at hand points out that the defendant had a business relationship with the plaintiff and had made certain payments towards discharge of the amounts due. It is the case of the plaintiff that the defendant is the one who placed the orders and received the equipments. He also alleges that the plaintiff had made payments subsequent to the supplies that have been made by the plaintiff. Therefore, this is the situation which falls between the two extremes. The



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defendant, having made out a triable issue, is entitled for leave but on some conditions that has to be imposed by the learned trial Judge. The learned trial Judge has exercised his discretion and has directed the defendant to deposit the amount of Rs.7,05,918/-, which is the balance of amount payable after giving due credit to the amounts paid by the defendant to the tune of Rs.3,22,440/-. Learned trial Judge has balanced the interest of the plaintiff and the defendant.

12. Mr.R.Harikrishnan points out that if this amount is deposited, the defendant would not be in a position to utilise the same. I see some sense in this submission.

13. Therefore, the civil revision petition stands disposed of on the following terms:

(i) The amount directed to be deposited by the learned trial Judge shall be, without prejudice to the right of the defendant, to contest the suit on its merits.

(ii) In the event the suit is dismissed, the learned Additional Commercial Judge at Egmore shall impose costs on the plaintiff and also consider awarding commercial interest for the amounts so deposited



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pursuant to the order in I.A.No.1 of 2021 in C.O.S.No.933 of 2022.

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(iii) Since the defendant has been agitating the correctness of order passed in I.A.No.1 of 2021 in C.O.S.No.933 of 2022 dated 30.09.2024, the time for deposit is extended by a further period of three weeks to 11.11.2024.

(iv) In case the amounts are not deposited within the said date, the civil revision petition will automatically stand dismissed without further notice to this Court. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The Additional Commercial Court, Egmore, Chennai.



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V. LAKSHMINARAYANAN,J.

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