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C.R.P(PD).No.4306 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P(PD).No.4306 of 2022

and

C.M.P.No.22628 of 2022

Spartek Ceramics India Limited,
Represented by its Director,
Having its Registered Office at
No.145, St.Mary's Road,
Chennai, Tamil Nadu – 600 018.

... Petitioner

Vs.

M/s.Spartek Agencies,
A Partnership Firm,
Represented by its Partner
G.V.Sabarinathan,
and Having its Registered Office at
No.2A, 1st Main Road, CIT Colony,
Mylapore, Chennai – 600 004.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2021 in C.O.S.No.496 of 2022 (Previously O.S.No.1896 of 2021) dated 17.10.2022 on the file of the Commercial Courts at Egmore and allow the Revision.

For Petitioner

: Mr.P.R.Raman



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Senior Counsel
for Mr.Anupam Raghuraman
for M/s.Raman and Associates

For Respondent : Mr.A.Palaniappan

ORDER

The petitioner has filed this Civil Revision Petition, challenging the order dated 17.10.2022 passed in I.A.No.1 of 2021 in C.O.S.No.496 of 2022 on the file of the Commercial Courts, Egmore, Chennai, wherein, the petitioner herein has filed an interlocutory application under Order VII Rule 11 of the Code of Civil Procedure, 1908 to reject the plaint and the same was dismissed.

2. According to the petitioner, he is the defendant in the suit and the respondent herein being the plaintiff has filed the suit for the relief of recovery of money (the amount due for the period from 10.03.2005 to 25.11.2005) as against the petitioner/defendant.

3. The petitioner/defendant is a public limited Company and was manufacturer of ceramic floor tiles and sanitary wares. During the course of business, the petitioner/defendant has appointed various retailers to market their products and one among whom, is the respondent/plaintiff herein.

4. In the year 2006, the petitioner/defendant Company ran into financial



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difficulties due to competition from foreign and domestic manufacturers and proceedings were initiated against the petitioner/defendant before the Board for Industrial and Financial Reconstruction (BIFR). The petitioner/defendant Company was declared as a “sick industrial Company” by BIFR on 03.11.2006 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Thereafter, the BIFR by its order dated 20.10.2016 approved Revival Scheme of the petitioner/defendant Company, which is binding on all the creditors of the petitioner/defendant Company in terms of Section 18(8) of the SICA.

5. The respondent/plaintiff had issued a Legal Notice dated 19.11.2020 demanding a sum of Rs.25,00,000/- with interest at the rate of 18% for the goods supplied to the petitioner/defendant in the year 2005. The interest was calculated from April 2006 onwards. A reply was sent by the petitioner/defendant Company dated 02.12.2020. Thereafter, the respondent/plaintiff had again issued rejoinder Notice on 25.12.2020 stating that they did not know about the Rehabilitation Scheme or that the amount of Rs.1,50,000/- was paid by the petitioner/defendant to the respondent/plaintiff in accordance with the Rehabilitation Scheme and further stated that the petitioner/defendant Company was not included in the Draft Rehabilitation



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Scheme dated 20.10.2016. According to the petitioner/defendant, the email

dated 23.10.2018 was sent by the former employee of the petitioner/defendant

Company who acknowledged the debt, but virtually, the suit was barred by

limitation owing to cause of action being in the year 2005 and the

respondent/plaintiff had lost their right to claim such amounts within a period of

three years, however, the suit was filed only after 15 years have passed.

Further, the petitioner/defendant had also reiterated that the respondent/plaintiff

has not invoked Section 25 of the SICA against the BIFR order dated

20.10.2016. Therefore, the Scheme of revival had attained the finality.

Therefore, the suit is barred by limitation and the same is liable to be rejected

under Order VII Rule 11 of the Code of Civil Procedure, 1908. But the trial

Court has not considered the case of the petitioner/defendant and thereby the

order passed by the trial Court is liable to be set aside and the plaint has to be

rejected.

6. According to the respondent/plaintiff, the petitioner/defendant at no

point of time in the Pre-Suit Notices, denied the liability to pay the suit claim

and now only for the first time, has come forward with this petition. The

question of limitation is a mixed question of law and facts, which cannot be

adjudicated under Order VII Rule 11 of the Code of Civil Procedure, 1908. The



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petitioner/defendant has not denied the suit claim specifically through the Reply

Notice and Sur-Rejoinder Notice. Since on account of operation of the

moratorium from the date of declaration of the petitioner/defendant herein as

“sick industry” i.e., 03.11.2006 to the date of approval of the Rehabilitation

Scheme by the BIFR i.e., 20.10.2016, the respondent/plaintiff was precluded

from raising another claim payable by the petitioner/defendant in terms of

Section 22(4)(a) of the SICA. The aforesaid order passed by the BIFR is

suppressed in the present petition to portray as though the suit is miserably

barred by limitation. By virtue of the order declaring the petitioner/defendant

Company as a “sick industry” by the BIFR in terms of order dated 03.11.2006,

any of the creditors, has a recourse either to approach the BIFR to claim the

amount or shall wait till the approval of the Rehabilitation Scheme by the BIFR

in accordance with Section 22(4)(b)(i) of the SICA. Already, the General

Manager (Finance and Accounts) of the petitioner/defendant Company had

issued the acknowledgement by admitting the amounts. The suit is well within

the limitation since the petitioner/defendant acknowledged the statement of

accounts and later the order passed by the BIFR declaring the

petitioner/defendant herein as a “sick industry”. Therefore, the petition filed by

the petitioner/defendant is liable to be dismissed.



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7. Before the trial Court, no oral or documentary evidence has been adduced on either side. The trial Court after having heard both sides, dismissed the petition by holding that the limitation is a mixed question of law and facts and dealt with the matter in proper perspective after providing opportunities to both parties to adduce oral and documentary evidences.

8. The learned counsel appearing for the petitioner would contend that the petitioner is the defendant in the main suit. The respondent herein has filed the suit for recovery of money. The suit transactions have taken place between the parties from 10.03.2005 to 25.11.2005. The said suit claim is barred by limitation since the suit was filed in the year 2021. The petitioner/defendant Company was declared as a “sick industry” by the BIFR through order dated 03.11.2006 and also the Industrial Development Bank of India (IDBI) was appointed as the Operating Agency for Revival Scheme. The BIFR also approved the Revival Scheme by order 20.10.2016. The said order is binding on all the creditors under Section 18(8) of the SICA. Already, the respondent/plaintiff has issued Legal Notice dated 19.11.2020, by demanding the suit amount and the same was suitably replied on 02.12.2020 stating that the petitioner/defendant Company was declared as “sick industry” in terms of Section 3(1)(o) of the SICA. Thereafter, the Operating Agency submitted a



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Draft Rehabilitation Scheme on 16.03.2016 and the particulars of this Scheme

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Rehabilitation Scheme for implementation by its order dated 20.10.2016.

Thereafter, the respondent/plaintiff had issued the Rejoinder Notice dated

25.12.2020 stating that they did not know about the Rehabilitation Scheme or

the amount of Rs.1,50,000/- paid by the petitioner/defendant to the

respondent/plaintiff in accordance with the Rehabilitation Scheme and the

respondent/plaintiff was not included in the Draft Rehabilitation Scheme.

Thereafter, the petitioner/defendant issued the Sur-Rejoinder Notice dated

22.01.2021 and also denied the unaware of BIFR proceedings and the

publications and also denied the email dated 23.10.2018. In spite of that, the

petitioner/defendant has filed the suit for time barred claim and thereby, the

petitioner/defendant filed the petition before the trial Court to reject the plaint

under Order VII Rule 7(d) of the Code of Civil Procedure, 1908. But, the trial

Court without considering the above said aspects, dismissed the petition.

Therefore, the order passed by the trial Court is liable to be set aside.

9. In support of his contentions, the learned counsel appearing for the

petitioner has relied on the Judgment of the Hon'ble Supreme Court in “**Modi**

Rubber Limited Vs. Continental Carbon India Limited”, 2023 SCC OnLine



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SC 296 and that of a Division Bench of this Court in “**Ramanan**

Balagangatharan Vs. M/s.Rise East Entertainment Private Limited” in

C.R.P.(SR).No.92516 of 2021 dated 24.03.2022.

10. The learned counsel appearing for the respondent/plaintiff would contend that the respondent is the plaintiff in the main suit and he filed the suit for recovery of money. Already, the respondent/plaintiff issued the Pre-Suit Notice and thereafter, so many notices were exchanged between the parties. In none of the notices, the petitioner/defendant has never raised any question in respect of limitation. The petitioner/defendant Company is a “sick industry” and thereby the proceedings were pending under the provisions of the SICA. Therefore, the said period has to be excluded under Section 22(3), (4) and (5) of the SICA. Further, the respondent/plaintiff was under the impression that his claim was also included in the proceedings before the SICA, but unfortunately the petitioner/defendant has not included the transactions of the respondent/plaintiff before the SICA and the same was also not brought to the knowledge of the respondent/plaintiff. However, the General Manager (Finance and Accounts) of the petitioner/defendant Company has acknowledged the debt on 23.10.2018. Therefore, the suit is filed within the period of limitation and even the question of limitation cannot be decided in the proceedings under



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Order VII Rule 11 of CPC and it requires a full-fledged trial since the petitioner/defendant Company was declared as a “sick company” and the proceedings were pending before the BIFR. Therefore, the point of limitation, cannot be decided at this stage.

11. To support of his contention, the learned counsel appearing for the respondent has relied on the following Judgments of the Hon'ble Supreme Court and that of the Andhra Pradesh High Court:

- i. **Waryam Singh and another Vs. Amarnath and another**, AIR 1954 SC 215.
- ii. **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and others**, (2006) 5 SCC 658.
- iii. **Popat and Kotecha Property Vs. State Bank of India Staff Association**, (2005) 7 SCC 510.
- iv. **Hyderabad Abrasives and Minerals Private Limited Vs. Andhra Cements Limited**, 2002 SCC OnLine AP 1080.

12. This Court heard both sides and perused the records.

13. According to the petitioner/defendant, the suit claim is pertaining to



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the year 2005 and the suit is filed in the year 2021 and thereby, the suit is barred by limitation and in the mean time, in the year 2006, the petitioner/defendant Company was under “sick” and the same was declared as “sick industry” by the BIFR and thereafter the BIFR approved the Revival Scheme on 20.10.2016. Therefore, as per the Scheme, all the creditors of the petitioner/defendant Company including the respondent/plaintiff are bound by the said Scheme. Therefore, the suit is barred by limitation. Moreover, as per the BIFR Scheme, a sum of Rs.1,50,000/- was paid to the respondent/plaintiff towards full and final settlement by the IDBI who was the Operating Agency in the year 2014 itself. Now, the respondent/plaintiff filed the suit. Therefore, the suit is barred by limitation.

14. According to the respondent/plaintiff, the proceedings before the SICA were pending from 2006 to 2016 i.e., from 03.11.2006 to 20.10.2016 and thereafter, the General Manager (Finance and Accounts) of the petitioner/defendant Company issued a Letter of Acknowledgement dated 23.10.2018 by admitting the suit claim of the respondent/plaintiff. Therefore, the suit is well within the period of limitation and the above said period during which, sick proceedings were pending before the SICA, is also excluded as per Section 22(5) of the SICA. Therefore, the suit is well within the limitation period.



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15. After considering the rival submissions and on perusal of records, this Court observed that the suit was filed in the year 2021 for the transactions that had taken place between the petitioner/defendant and the respondent/plaintiff for the period from 10.03.2005 to 25.11.2005. The suit was filed in the year 2021. According to the respondent/plaintiff, he is entitled to the benefit of Section 22(5) of the SICA in respect of the petitioner/defendant Company.

16. The above said aspects, ought to be decided after an elaborate trial and it is well settled law that the limitation can be decided after full trial and if on the face of records shows that the suit is barred by limitation, then the Court can invoke Order VII Rule 11 of the Code of Civil Procedure, 1908 and reject the plaint.

17. In the case on hand, according to the respondent/plaintiff, he is entitled to the benefit of Section 22(5) of the SICA and it is an admitted fact that the petitioner/defendant Company was under sick proceedings for the period from 03.11.2006 to 20.10.2016 under the provisions of SICA. Further, the factum of issue of acknowledgement also can be decided after full-fledged trial



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and not at this stage and also as regards the issue of acknowledgement, the same cannot be decided at this stage and it needs an elaborate trial.

18. The learned counsel appearing for the respondent has raised a jurisdictional point that as per Section 8 of the Commercial Courts Act, 2015, there is a bar to entertain a revision as against the interlocutory application. It is true that there is a bar as against the revision application or petition against the interlocutory order passed by the Commercial Court. But the petition has not been filed under Section 115 of the Code of Civil Procedure, 1908 and the present petition is filed under Article 227 of the Constitution of India. There is a bar against the civil revision application and that the civil revision is under the provisions of the Code of Civil Procedure and there is no bar for the supervisory power under Article 227 of the Constitution of India which cannot be taken away by any Act since the Constitution of India is Parent Act and supreme over all other Acts.

19. In this context, the learned counsel appearing for the petitioner has relied upon the Judgment of the Division Bench of this Court in “**Ramanan Balagangatharan's case**” (cited supra) wherein, in Paragraph 3, it has been held as follows:



“3.The learned counsel for the petitioner, vehemently contended that the Civil Revision Petition is very much maintainable before the Division Bench of this Court challenging the order passed by the learned Single Judge and in support of his contention, the learned counsel relied upon a judgment of the Division Bench of Gujarat High Court reported in **2018 SCC Online Guj 1515 [State of Gujarat Vs. Union of India]** wherein the Division Bench has stated as follows:

“ ...

33.Even otherwise, considering the wordings used in Section 8 of the Commercial Courts Act, there is a serious doubt whether the bar under Section 8 of the Commercial Courts Act shall be applicable to the petitions under Article 227 of the Constitution of India. Section 8 of the Commercial Courts Act reads as under:

“8. Bar against revision application or petition against an interlocutory order-Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

...

41.In view of the above and for reasons stated above and considering the decisions of Hon'ble Supreme Court referred to hereinabove, our conclusions in nutshell are as under:-

(1)The bar contained under Section 8 of the Commercial Courts Act against entertainability of “civil revision application or petition” against the interlocutory orders passed by the



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subordinate/Commercial Courts, shall not be applicable to the writ petitions under Article 227 of the Constitution of India.

(2)The bar contained in Section 8 of the Commercial Courts Act shall not affect the supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India in respect of the orders, including interlocutory orders, passed by the Commercial Court and writ petitions under Article 227 of the Constitution of India may be entertainable, however, subject to the following observations and restrictions:-

(a)Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(b)The supervisory jurisdiction under Article 227 of the Constitution of India may not be exercised to correct mere errors of fact or of law and may be exercised only when the following requirements are satisfied:-

(i)the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby

(c)A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot



be called gross or patent.

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(d)The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(3)Though while exercising supervisory jurisdiction under Article 227 of the Constitution of India, the High Court may annul or set aside the act, order or proceedings of the subordinate courts, it may not substitute its own decision in place thereof.

(4)In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases, itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

(5)That while exercising powers under Article 227 of the Constitution of India, the High Court would have to consider the observations made by the Hon'ble Supreme Court in Paragraph-39 in the case of Surya Dev Rai v. Ram Chander Rai (supra),



which are as under:-

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“39. Though we have tried to lay down broad principles and working rules the fact remains that the parameters for exercise of jurisdiction under Article-226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where a stitch in time would save nine. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge”.”

20. Therefore, in view of the above said Judgment, it is clear that the supervisory jurisdiction under Article 227 of the Constitution of India will not affect the bar contained in Section 8 of the Commercial Courts Act, 2015. However, the said supervisory jurisdiction may not be exercised to correct mere errors of facts or law and may be exercised only when the Court is satisfied that the error is manifest and apparent on the face of the proceedings and a grave injustice or gross failure of justice had occasioned thereby. Therefore, the



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revision is maintainable and whether the power under Article 227 of the Constitution of India can be exercised in this case can be decided later.

21. As far as the applicability of Order VII Rule 11 of the Code of the Civil Procedure, 1908 is concerned, the question of limitation is mixed with the question of fact and question of law. Therefore, the claim of the petitioner/defendant that the suit is barred by limitation, cannot be decided without full trial.

22. In this context, the learned counsel appearing for the respondent has relied on the following Judgments of the Hon'ble Supreme Court and that of the Andhra Pradesh High Court:

(i) **Waryam Singh and another Vs. Amarnath and another**, AIR 1954 SC 215.

(ii) **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and others**, (2006) 5 SCC 658.

(iii) **Popat and Kotecha Property Vs. State Bank of India Staff Association**, (2005) 7 SCC 510.

(iv) **Hyderabad Abrasives and Minerals Privated Limited Vs. Andhra Cements Limited**, 2002 SCC OnLine AP 1080.



23. On a careful perusal of those Judgments, it is clear that question of limitation is a mixed question of law and facts and on mere reading of the plaint, the suit cannot be held to be barred by limitation. The parties relegated to contest the suit and it is open to the petitioner/defendant to raise any plea available to it under the law including the plea of limitation, maintainability of the suit etc. before the trial Court.

24. In the case on hand also, the respondent/plaintiff contended that the suit is barred by limitation. The respondent/plaintiff would contend that there is an acknowledgement and there is an exclusion of limitation period under Section 22(5) of the SICA. Therefore, the question of limitation cannot be decided at this stage.

25. The learned counsel appearing for the petitioner has relied on the Judgement of the Hon'ble Supreme Court in **Modi Rubber Limited case** (cited supra), wherein, in Paragraph 41, the Hon'ble Supreme Court held as follows:

“41. Section 18(7) of SICA, 1985 is an important provision which provides that the sanction accorded by BIFR shall be conclusive evidence that all the requirements of the scheme relating to reconstruction or amalgamation or any measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of BIFR to be a true copy thereof shall be admissible as evidence in all legal proceedings. To resolve the difficulties that may arise in giving effect to the provisions to the sanctioned scheme, BIFR



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may, on the recommendation of the operating agency or otherwise, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing difficulty in terms of Section 18(9) of SICA, 1985.”

26. On careful perusal of the aforesaid Judgment, it is clear that sanction accorded by the BIFR shall be conclusive evidence that all the requirements of the Scheme relating to reconstruction or amalgamation or any measure specified therein have been complied with and a copy of sanctioned Scheme certified in writing by an Officer of BIFR to be a true copy thereof shall be admissible as is evident in all legal proceedings.

27. In the case on hand also, the BIFR has permitted the Scheme and it was published on 26.10.2016. Therefore, as discussed supra, the claim of the petitioner/defendant cannot be considered and decided as time barred at this stage and the petitioner/defendant is at liberty to raise all the grounds raised in the petition as defence before the trial Court.

28. The trial Court, after elaborate discussion, has correctly held that the limitation is a mixed question of fact and law and deeply gone into after providing opportunities to both parties to adduce oral and documentary



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evidences and rightly dismissed the petition. Therefore, the order passed by the

trial Court is in order and does not warrant any interference.

29. Therefore, as discussed above, this Court is of the opinion that there is no scope to exercise the power under Article 227 of the Constitution of India in this case and this petition has no merits and deserves to be dismissed.

30. In the result, this Civil Revision Petition is dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

25.04.2024

Index : Yes / No
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Speaking Order/Non-Speaking Order
Neutral Citation : Yes / No

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To

The Commercial Court,
Chennai.



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P.DHANABAL, J.

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