



C.R.P. (PD) .No.4831 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4831 of 2024
and C.M.P.Nos.26973 & 26974 of 2024

Global Trade Ventures
Represented by

1.Palayam Prabhakar Prashanth

2.Prashanth Gitanjali

.. Petitioner

Vs.

Mahalakshmi Holidays,
Represented by its business head
Veeramanikandan.

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 03.10.2024 passed in O.S.No.157 of 2023 on the file of Ld.Subordinate Judge, Alandur and consequently set aside the *exparte* order dated 09.07.2024 in the said O.S.No.157 of 2023.

For Petitioner : Mr.Lokeshvaran

ORDER



WEB COPY

This civil revision petition arises against the order passed by the learned Subordinate Judge at Alandur in I.A.No.1 of 2024 in O.S.No.157 of 2023 dated 03.10.2024.

2.O.S.No.157 of 2023 is a suit for recovery of money for a sum of Rs.1,39,950/- together with interest at the rate of 12% per annum from the date of the plaint till the date of realization.

3.The background of the suit is that the defendant had booked flight tickets through the plaintiff. The defendant had not paid for the same. Hence, the plaintiff brought forth the suit for recovery of money.

4.Summon was issued to the defendant. He was served with the summons and yet, he did not file the written statement. Therefore, he was set *exparte* on 15.03.2024. Thereafter, he moved an application under Order IX Rule 7 of the Code of Civil Procedure, 1908, to set aside the *exparte* order and filed his written statement along with the said petition.

5.The learned Trial Judge was pleased to set aside the *exparte* order and



receive a written statement. He posted the matter on 24.06.2024 for the appearance the parties. On that day, the defendant did not appear. Therefore, a request for adjournment was sought for. The matter was adjourned to 09.07.2024. Even on that day, the defendant did not appear. There was no representation on his behalf. The reason being the Advocates Association of Alandur had decided to abstain from attending the Court on that day. The Court recorded the absence of the defendant and proceeded to set him *exparte* on 09.07.2024. It adjourned the matter for recording the *exparte* evidence to 09.08.2024.

6.In the interregnum, the defendant filed an application under Order IX Rule 7 of the Code of Civil Procedure, 1908. Being a second application under Order IX Rule 7 of the Code of Civil Procedure, 1908, the plaintiff stoutly opposed the application. It pleaded the entire idea of the defendant is only to drag on the matter and not permitting the suit to see the light of trial.

7.The learned Judge considering the competing interests, passed an order directing the defendant to deposit a sum of Rs.1,39,950/- to the credit of the suit. He made it clear that, in case, the plaintiff succeeds, he would be



entitled to withdraw the amount. He also made it clear that in case the defendant succeeds, he will be entitled to withdraw the amount. Challenging the same, the present Civil Revision Petition has been filed.

8.I heard Mr.Lokeshvaran for the civil revision petitioner.

9.Mr.Lokeshvaran urges that the condition imposed by the learned Judge directing him to deposit the entire suit amount is onerous and excessive. He states that the defendant would be willing to comply with any other condition than the direction to deposit the amount. He relies upon a recent judgment of the Supreme Court in *M/s.Trois Corporation HK Ltd. Vs. M/s.National Ventures Private Limited, 2024 2 MLJ 417*, to argue imposition of a condition to deposit amounts should not be disproportionate.

10.I have carefully considered the submissions of Mr.Lokeshvaran.

11.On the plea that the Court has fixed an onerous condition, I have to point out that it is a discretionary order under Order IX Rule 7 of the Code. By this provision, the Court sets the clock back on finding that the defendant



has assigned a “good cause” for his absence on the previous day. At the time of allowing the application, the Court can direct payment of cost, or such other directions that it feels just and necessary in the interest of justice.

12.This is not the first time that the defendant had remained *exparte*. He had not appeared before the Court on 15.03.2024, 26.06.2024 and on 09.07.2024. The impression that he has given to the Court is that he wants to keep away from the proceedings. The learned Judge decided that in order to ensure the participation of the defendant in the suit, an order directing him to deposit the amount would serve the ends of justice.

13.Now turning to the authority that has been cited by Mr.Lokeshvaran, that case arose out of entirely a different situation. A draft plaint was filed along with an application for leave to sue under Clause 12 of the Letters Patent. The defendant was served with summons in the leave to sue application. Yet, he remained absent from the Court. Even at that stage, an *exparte* decree was passed against the defendant. An application was filed to set aside the *exparte* decree pointing out that summons was served only in the leave to sue application and not in the suit. This Court had set aside the



exparte decree on the condition that the defendant deposits 75% of the suit claim to the credit of the suit. The Supreme Court was constrained to interfere that on account of the fact that the defendant had been set *exparte* even without service of summons in the suit. That fact does not prevail in the present case.

14.As pointed out, though summons have been served, the defendant remained *exparte*. After it was set aside, yet again, he did not appear before the Court, despite its direction on 26.06.2024 and 09.07.2024. The Trial Court, in its wisdom, felt that in case the defendant were to deposit the amount to the credit of the suit, he would cooperate for the disposal of the suit. He would necessarily have to do so to ensure that he gets back the money that he so deposited. Being a discretionary order and in any event, as the Court having balanced the interests of the plaintiff and defendant, I am not inclined to interfere with the order of the learned Trial Judge, despite the vehement pleas of Mr.Lokeshvaran.

15.I notice that the time granted to deposit the amount has expired. Therefore, the civil revision petitioner is granted time till **10.01.2025** to



C.R.P. (PD) .No.4831 of 2024

deposit the amount of **Rs.1,39,950/-** to the credit of the suit. In case such deposit is made before the date fixed by this Court, the learned Subordinate Judge is requested to keep the amount in a interest bearing account, so that neither the plaintiff nor the defendant will lose interest.

16. With the above modification of extension of time alone for deposit, this Civil Revision Petition stands dismissed. In all other aspects, the order of the learned Subordinate Judge, Alandur, stands confirmed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

03.12.2024

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Sub Court,
Alandur.

V.LAKSHMINARAYANAN, J.



WEB COPY



C.R.P. (PD) .No.4831 of 2024

krk

C.R.P.(PD).No.4831 of 2024

03.12.2024