



C.R.P. (PD) .No.4867 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4867 of 2024
and C.M.P.No.27273 of 2024

M.Rajkumar

.. Petitioner

Vs.

M/s.Salem Mines and Aggregates,
Thirukalukundram, Chengalpattu.
Rep. by its Partner,
R.Gopal,
D.No.5, 3rd Cross Street,
Ramesh Nagar, West Tambaram,
Chennai.

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 22.10.2024 passed in Un.No.I.A.No. of 2024 in C.O.S.No.23 of 2023 on the file of the Commercial Court / Principal District Judge, Namakkal.

For Petitioner : Mr.C.Prakasam

ORDER

This civil revision petition arises against the order passed by the learned Principal District Judge, Namakkal, in Un.No.I.A.No. of 2024 in



C.O.S.No.23 of 2023 dated 22.10.2024.

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2.The defendant in C.O.S.No.23 of 2023 is the civil revision petitioner herein.

3.The case of the plaintiff is that the defendant had made purchases from the plaintiff. He had defaulted in payment of the amounts, leaving a balance of Rs.1,27,18,317.74 (rounded off to Rs.1,27,18,318/-). Despite several requests from the plaintiff, the amount was not paid by the defendant. Hence, the plaintiff presented a suit for the aforesaid amount. The transaction being a commercial transaction, the suit was presented invoking Commercial Courts Act of 2015. Pre-institution meditation was attempted. It ended in failure. Therefore, the suit was taken on file as C.O.S.No.23 of 2023.

4.Summons was served on the defendant. He did not file the written statement in time. Therefore, he presented an application in unnumbered I.A..... of 2024. He sought for extension of time to file a written statement. The learned Trial Judge dismissed the petition at the SR stage itself. Hence, this revision.



5.Mr.C.Prakasam, relying upon the judgment of this Court in **K.Ramu Vs. The Additional Registrar of Cooperative Societies, Kilpauk, Chennai and others**, in **W.P.No.606 of 2011** dated **10.02.2011**, pleads that if no time is fixed under the Act, the Court is entitled to extend the time granted to perform the necessary act. He states that the Commercial Courts Act does not contemplate the provision for extension of time. Therefore, his application should have been considered by the learned Trial Judge. Finally, he pleads that since he was pursuing this revision, he was not in a position to cross examine the plaintiff's witnesses and therefore, the evidence of the plaintiff had been closed. Therefore, he states even if he has not filed a written statement, he is entitled to cross examine a party. For this purpose, he relied upon the judgment of the Supreme Court in **Ranjit Singh and another Vs. State of Uttarakhand and others, (2024) 5 MLJ 481 (SC)**.

6.I have carefully considered the submissions of Mr.C.Prakasam and I have gone through the records.

7.The Code of Civil Procedure was amended by the Commercial Courts Act of 2015. Under the said Act, a proviso was introduced to Order



VIII Rule 1 of the Code. For any suit which falls under the category of a Commercial suit, it is that procedure which has to be followed and not the general procedure found under the Code.

8.Under the amended Order VIII Rule 1, a defendant is granted 30 days time to file his / her written statement from the date the summons is served on him. This time is extended by a further period of 90 days. On the lapse of 120 days, the provision demands that the defendant forfeit his right to file a written statement. Apart from this, it further directs the Commercial Court should not allow the written statement to be taken on record.

9.A reading of this proviso makes it clear that it is an embargo on a party to file a written statement beyond the period of 120 days from the date of service of summons. It also places an other embargo on the Court from receiving written statement once the period of 120 days has expired. The Act has not enabled the Court to extend the time for filing the written statement beyond 120 days. Therefore, the petition seeking extension of time by the civil revision petitioner / defendant had rightly been refused by the learned Trial Judge.



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10.The last plea raised by Mr.C.Prakasam deserves some consideration. For the mere fact that the defendant has not filed his written statement does not mean that he forfeited his right to cross examine the plaintiff on his own case. By virtue of the defendant being set *exparte*, the defendant has only lost his right to present his defence before the Court. He does not loses his right to cross examine the plaintiff. Since, Mr.C.Prakasam's client was pursuing this remedy, the learned Principal District Judge, Namakkal, has forfeited that right also. Hence, the learned Judge is requested to give an opportunity to the defendant to cross examine the plaintiff.

11.With the above observations, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.12.2024

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



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V.LAKSHMINARAYANAN, J.

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To

The Commercial Court / Principal District Judge,
Namakkal.

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