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C.R.P.No.62 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2024

PRONOUNCED ON : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.62 of 2024 and

C.M.P.No.258 of 2024

1.R.Palanisamy

2.P.Soundaram

3.R.Shanmugam

4.S.Gandhimadhi

5.R.Chandrasekaran

6.C.Revathi

... Petitioners

Vs.

M/s.Cosmos Sports World

a Limited Liability Partnership Firm

by its Designated Partner Calicut,

State of Kerala.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.5 of 2023 in O.S.No.468 of 2023 on the file of the Commercial Court (Senior Civil Judge Cadre, Coimbatore) dated 08.12.2023 and allow the civil revision petition.

For Petitioners : Mr.V.Sivakumar

For Respondent : Mr.George Cheriyan

ORDER



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The petitioners/plaintiffs in C.O.S.No.468 of 2023 filed I.A.No.5 of 2023 in C.O.S.No.468 of 2023 under Order XI Rule 1(5) of C.P.C, as amended to Commercial Courts Act, 2015 before the learned Judge, Commercial Court (Senior Civil Judge Cadre), Coimbatore (In short 'Trial Court') to permit them to produce original passbooks listed as document No.8 in the plaint and further to produce document Nos.2, 3 & 4 mentioned in the plaint, marked as exhibits, to clarify date and time of Email correspondence. The trial Court by impugned order, dated 18.12.2023 dismissed the same. Against which, the present civil revision petition is filed.

2.The learned counsel for the petitioners submitted that the petitioners are the owners of the suit property and the respondent/defendant became a tenant. The respondent occupied the schedule property by virtue of lease deed, dated 04.10.2012 on the monthly rent of Rs.3,00,000/- per month and service tax of Rs.15,000/- and the rent to be enhanced 15% every three years. From 04.10.2015, the respondent ought to have paid the enhanced rent of Rs.3,45,000/- along with service tax of Rs.26,600/-. When the same



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not paid, the petitioners demanded enhanced rent and sent a demand notice, dated 18.12.2015. Followed with, a legal notice, dated 20.04.2018 demanding a sum of Rs.10,76,200/- towards enhanced rent. The respondent's stand was that there was no written lease deed and it was only an old agreement and the respondent also sent Email in this regard. Further, the lease deed was in possession of the respondent. He further submitted that in the plaint, eight documents listed of which document No.2 is Email, dated 29.09.2017. The photostat copies of the passbook shown as document No.8 and marked as exhibit. His evidence recorded on 30.08.2023 and on the same day he was cross examined. During cross examination, Email questioned as regards date and time of the Email correspondence and questioned production of photostat copies of the bank passbooks.

3.It is further submitted that the petitioner filed four applications in I.A.Nos.4 to 7 of 2023 in C.O.S.No.468 of 2023. I.A.No.6 of 2023 in C.O.S.No.468 of 2023 was allowed and thereby, GST authority was directed to produce written lease agreement entered between the petitioners and the respondent. The said document are yet to be exhibited. He further submitted that the trial Court failed to consider the background of the case.



Initially, the suit was filed before the Civil Court and later it has been transferred to the Commercial Court at the stage of cross examination. In such circumstances, expecting the petitioners to fulfill the provisions of the Commercial Courts Act, 2015 would not be proper. Though the petitioners in their affidavit had given reason for producing the documents, the trial Court finding is that no reason given, which is not proper. The trial Court ought to have considered that all litigants should be given an opportunity to put forth their case with supporting evidence including documents.

4.He further submitted that out of six bank passbooks (document No.8), three bank passbooks already in the plaint and now traced out three passbooks recently which ought to be marked. The trial Court finding that the as per Order XI Rule 6, the document could not be produced without establishing reasonable cause, is against the pleadings since the petitioners explained that the original passbooks traced out recently, hence, necessitated to be marked now. In the interest of justice, the petitioners ought to be permitted to produce the clear copy of Email with date and time and the original passbooks and mark them as exhibits which the trial Court failed to consider.



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5. In support of his contention, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the case of “***Sudhir Kumar @ S.Baliyan v. Vinay Kumar G.B*** reported in ***(2021) 13 SCC 71***” wherein it had held that *'Order XI Rule 1 of C.P.C as applicable to the commercial suits brought about a radical change and it mandates the plaintiff to file a list of all documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint and a procedure provided under Order XI Rule 1 is required to be followed by plaintiff and defendant'*. In this case, the petitioners in the plaint copy had given details of the documents and listed the documents in the plaint.

6. Making the above submissions, the learned counsel for the petitioners prays for setting aside the impugned order of the trial Court.

7. The learned counsel for the respondent filed counter submitted that the petitioners filed suit in O.S.No.480 of 2018 before the learned District Judge, Coimbatore in the month of August 2018. Along with the plaint, the



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petitioners filed eight documents of which the document Nos.2, 3 & 4 are email print outs and the document No.8 is the photostat copies of the petitioners' passbook. On 02.06.2023, the suit was transferred to the Commercial Court with direction to the parties to appear before the Commercial Court on 10.07.2023. Thereafter, the Commercial Court directed the parties to file admission and denial of documents and statement of truth and the respondent has filed the same but the petitioners filed only the statement of truth. The respondent specifically challenged the genuineness and opposed marking of documents including document Nos.2, 3, 4 & 8 mentioned in the plaint and in the proof affidavit. He further submitted that the trial Court fixed date for furnishing the list of witnesses by both sides on 03.08.2023 and for furnishing proof affidavit of list of witnesses on 17.08.2023 and for examination of witnesses for whom the proof affidavit by both sides on 28.08.2023 and for filing the written arguments by both sides on 04.09.2023. On 31.08.2023, the 5th petitioner filed a declaration of oath as contemplated under Order 11 Rule 6 of C.P.C as amended by the Commercial Courts Act, 2015 and documents produced by the petitioners. Exs.A1 to A6 were marked and the 5th petitioner was cross examined by the respondent counsel and the petitioners does not have



any further evidence. Hence, the trial Court closed the evidence and posted the case for final arguments by both sides. At this stage, the petitioners have filed I.A.No.5 of 2023 in C.O.S.No.468 of 2023 before the trial Court seeking to file additional document, being the originals of document Nos.2, 3 & 4 which are marked as Exs.A2, A3 & A4 respectively and document No.8 passbook under Order XI Rule 1(5) of CPC as amended to the Commercial Courts Act, 2015. The trial Court on considering the submissions, dismissed the application vide impugned order, dated 08.12.2023.

8.It is further submitted that the above civil revision petition is not maintainable in law and is liable to be dismissed under Section 8 of the Commercial Courts Act, 2015. The commercial Court Act being a special legislation, the civil revision petition will not lie against the order passed by the Commercial Court Judge dismissing I.A.No.5 of 2023 in C.O.S.No.468 of 2023 filed by the petitioners. The document No.8 passbook and document Nos.2, 3 & 4 emails marked as exhibits 2, 3 & 4 were in the possession and control of the petitioners at the time of filing the suit in the year 2018. however the petitioners did not produce the documents even at



the time of filing the admission and denial of documents and statement of truth. Further, the petitioners failed to produce the documents at the time of marking of the plaint documents before the Commercial Court. The petitioners are now filing this application with intention to fill up lacuna in their evidence and to drag the proceedings without any justifiable cause for reopening the evidence and recalling PW1 and to receive the additional documents.

9.In support of his submissions, the learned counsel for the respondent relied on the decision of this Court in the case of “**Ramanan Balagangatharan v. M/s.Rise East Entertainment Private Limited** reported in **MANU/TN/1872/2022**”

10.Considering the submissions on either side and on perusal of the materials, it is seen that I.A.No.5 of 2023 in C.O.S.No.468 of 2023 is filed by the petitioners/plaintiffs to produce passbooks of the plaintiffs 1, 4 & 5, Full Email (dated 29.09.2017 and 21.03.2018) correspondence with details of date and time of sender and recipient. These are listed as documents under Order VII Rule 14 while filing the suit and the same also mentioned as



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documents Nos.2, 3 & 4. The passbooks which shown as document No.8 in the plaint is only photostat copies. Of six bank passbooks already produced along with plaint, three traced out and produced. For that reason, I.A.No.5 of 2023 in C.O.S.No.468 of 2023 filed before the trial Court. In the impugned order, the finding of the trial Court is that these documents filed after filing of admission and denial statement and the petitioners not shown reasonable cause for belated filing of documents. Further the explanation given that on the same day of chief examination, cross examination conducted, during cross examination, genuineness of Email with regard to non-availability of missing particulars of time and date of sender and recipient, questioned. Finding that this cannot be a reasonable cause for delay in filing the petition, the trial Court dismissed I.A.No.5 of 2023 which is not proper. As per Order XI Rule 5, the requirement is that the plaintiffs to establish reasonable cause for non-disclosure of documents along with plaint. On perusal of the plaint, it is seen that these documents disclosed and it is also disclosed in the statement of truth. It is not the case that the documents were found subsequent to filing of plaint. The documents were in possession of plaintiffs and disclosed earlier not disputed. Thus, the petitioners/plaintiffs gave reasonable cause for producing the documents



later. These documents are important for adjudication of the dispute between the parties.

11.It is also to be seen that the trial Court allowed I.A.No.6 of 2023, thereby Goods and Service Tax Authority already produced written lease agreement between the petitioners and the respondent. The respondent's consistent stand is that there was no written lease agreement and it was only oral agreement between them. Further payment of enhanced rent also disputed. Now the written lease agreement produced and marking of passbooks would further the case of the petitioners.

12.The contention of the respondent that Section 8 of the Commercial Courts Act, 2015 would be bar in entertaining civil revision petition, is not correct. It is settled position that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. Article 227 is the power vested with the Court to correct and intervene in the right cases. Failure to intervene would result in travesty of justice or such refusal itself would result in prolonging of the lis. Thus, in exercising the supervisory jurisdiction under Article 227



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of the Constitution, the High Court may annul or set aside the act, order or proceedings of the Subordinate Courts.

13.The Hon'ble Apex Court in the case of “*Surya Dev Rai v. Ram Chander Rai*” reported in *(2003) 6 SCC 675*” laid down principles in exercising jurisdiction under Article 226 & 227 of Constitution of India and power cannot be tied down in straight-jacket formula with rigid rules. Hence, the contention of the respondent that bar under Section 8 of the Commercial Courts Act, 2015 is not sustainable.

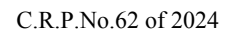
14.In view of the above, this Court set asides the impugned order, dated 08.12.2023 in I.A.No.5 of 2023 in C.O.S.No.468 of 2023 passed by the Judge, Commercial Court (Senior Civil Judge Cadre), Coimbatore. Accordingly, this civil revision petition is allowed. Consequently, connected civil miscellaneous petition is closed. No costs.

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Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes



To

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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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