



C.R.P. (MD) No.107 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2024

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C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

C.R.P. (MD) No. 107 of 2024
and
C.M.P. (MD) No. 493 of 2024

1.M/s.Vijay Poly Pipes,
No.7/258, Thalayampalayam,
Kunnathur Road,
Perundurai,
Erode District – 638 057.

2.M/s.Aariza Electricals,
No. 255/1, Karpagaveethi South Street,
Puliyangudi – 627 855,
Thenkasi District.

... Petitioners

Vs.

M/s.Vijay Pipes Industries,
A Partnership firm and rep. By its Partner,
D.Suresh

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.12.2023 passed in I.A. No. 3 of 2023 in COS No. 2 of 2022 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.



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For Petitioners : Mr. M.P.Senthil

For Respondent : Mr. A.Swaminathan

ORDER

This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed challenging the order dated 08.12.2023 in I.A. No. 3 of 2023 in COS No. 2 of 2022 (hereinafter referred to as the 'Impugned Order' for short) on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur (hereinafter referred to as the 'Commercial Court' for short).

2. The parties are hereinafter referred to as by the description in the suit in COS No. 2 of 2022 before the Commercial Court for the sake of clarity and convenience.

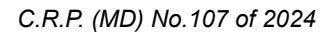
3. Heard Mr. M.P.Senthil, Learned Counsel for the Defendants and Mr. A.Swaminathan, Learned Counsel for the Plaintiff and perused the materials placed on record, apart from the pleadings of the parties.



4. It is borne out from the records that the suit which relates to a trademark dispute, had been initially treated at the time of its filing on 11.04.2022 as an regular suit in which summons was served on the Defendants on 10.05.2022. The Defendants entered appearance through his counsel 22.04.2022 on receipt of notice in the application in I.A. No. 1 of 2022 in that suit, and the case was posted to 27.06.2022 for filing their Counter in that application and along with the Written Statement in the suit.

5. As it was realized that the case relates to 'commercial dispute' within the meaning of Section 2(c)(xvii) of the Commercial Courts Act, 2015 (hereinafter referred to as the 'CC Act' for short), it was converted as a commercial suit on 25.07.2022 and the matter was adjourned to 27.07.2022, 26.08.2022, 16.09.2022 and 19.09.2022. The Defendants had filed the Counter in I.A. No. 1 of 2022 on 09.09.2022 along with the memo to accept it as their Written Statement in the suit, but the Commercial Court by order dated 28.11.2022 declined to accept the said contention and held that the Defendants had forfeited their right to file the Written Statement as it was beyond the maximum period of 120 days from the date of service of summons in the suit in terms of second proviso to Rule 1 of Order V of the

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as amended by Section 16 of the Commercial Courts Act, 2015. The commercial suit was then posted for trial on 02.03.2023, when the Defendants filed the application in I.A. No. 3 of 2023 to receive their Written Statement, which has been dismissed by the impugned order holding that the Defendants have not properly explained as to why they have not filed their Written Statements within the stipulated time.

6. It is, no doubt, true, as held by the Hon'ble Supreme Court of India in ***SCG Contracts (India) Private Limited -vs- K.S.Chamankar Infrastructure Private Limited*** [(2019) 12 SCC 210] that the maximum period of 120 days fixed for filing Written Statement in terms of the second proviso to Rule 1 Order V of CPC is mandatory for commercial suits. However, it must be recapitulated here that the suit was initially treated as a regular suit and it had been converted as the 'commercial suit' only on 25.07.2022 in which event it is a 'transferred suit' governed by the proviso to Section 15(4) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the CC Act' for short), that reads as follows:-



(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

This would obviously mean that the maximum time limit of 120 days for filing Written Statement would not be mandatory in a transferred suit and the Commercial Court, would have to prescribe a new time period within which the Written Statement must be filed. This position of law has been explained by the Hon'ble Supreme Court of India in ***Raj Process Equipments and Systems Pvt. Ltd -vs- Honest Derivatives*** (Order dated 03.11.2022 in Civil Appeal No. 8089 of 2022), in the following words:-



9. There is no dispute about the fact that at the time when the suit was filed and at the time when the order dated 03.07.2018 was passed, the court before which the suit was pending was a normal Civil Court. It was only after the order dated 03.07.2018 was passed directing the matter to proceed ex-parte that the matter got transferred to a Commercial Court.

10. It is also an admitted fact that the period of 120 days as stipulated in the second proviso to sub-rule (1) of Rule 1 of Order V CPC and the proviso to Rule 1 of Order VIII expired on 18.06.2018.

11. In other words, the time that was available, if a strict interpretation is given to the aforesaid provisions, was nothing because the time of 120 days had expired even when the matter was pending before the normal Civil Court.



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12. Reliance was placed by the High Court on the judgment of this Court in *SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited* [(2019) 12 SCC 210], in support of the contention that the time-line prescribed under the second proviso to sub-rule (1) of Rule 1 of Order V CPC is mandatory and that the appellants have forfeited their right to file written statements.

13. But we do not agree. The suit that became the subject matter of dispute in *SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited* [(2019) 12 SCC 210], appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In *Salem Advocate Bar Association v. Union of India*, [(2005) 6 SCC 344], this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not mandatory. An exception was carved out in *SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited* [(2019) 12 SCC 210], to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, to apply the same



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principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in *Salem Advocate Bar Association v. Union of India* [(2005) 6 SCC 344], to the proviso to Order VIII Rule 1 CPC.

14. In fact the decision in *SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited* [(2019) 12 SCC 210] is by a 2-member Bench, which was dealing with the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, when the decision of the 3-member Bench in *Salem Advocate Bar Association v. Union of India* [(2005) 6 SCC 344], was cited before this Court in *SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited* [(2019) 12 SCC 210], this Court held in paragraph 11 that the earlier law on Order VIII Rule 1 has now been set at naught. Therefore, what is to be applied to normal Civil Courts is Order VIII Rule 1 and the interpretation given to the same in *Salem Advocate Bar Association v. Union of India* [(2005) 6 SCC 344].



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In the instant case, the application in I.A. No. 3 of 2023 made by the Defendants to receive their Written Statement on 02.03.2023 was dismissed by the impugned order holding that the Defendants had not come forward to file it within the stipulated time of 120 days from 25.07.2022, which had lapsed on 25.11.2022. As already noticed, the Defendants had on 09.09.2022 filed a memo to treat the Counter filed in I.A. No. 1 of 2022 as their Written Statement in the suit, but it was declined by order dated 28.11.2022. Viewed from that perspective, it becomes apparent that the refusal of the Commercial Court to provide an opportunity to the Defendants to file their Written Statements after declining to treat the Counter in I.A. No. 1 of 2022 as Written Statement in the suit, amounts to gross and manifest failure of justice, which requires interference of this Court in exercise of its supervisory powers under Article 227 of the Constitution.

7. In view of the foregoing discussion, the Impugned Order is set aside, and the Written Statement filed on 02.03.2023 by the Defendants shall be taken on file by the Commercial Court, and the matter shall be listed on 27.06.2024 before the Commercial Court for case management hearing of the

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suit from that stage and further proceedings in the suit shall be determined following the prescribed procedure in accordance with law.

In the upshot, the Civil Revision Petition is ordered on the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

Index : Yes/No
NCC : Yes/No
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TO:

The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.

Note:- Issue order copy by 24.06.2024.



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P.D.AUDIKESAVALU,J.

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