



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM :

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.1888 of 2024
and
CMP(MD)No.10709 of 2024

Jagadeesan

... Petitioner/Petitioner/Plaintiff

v.

1.K.R.Nivethan

2.Ragul

...Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.02.2024 in I.A No.2 of 2023 in COS No.7 of 2023 on the file of the Subordinate Judge, Kulithalai.

For Petitioner : Mr.J.Madhu

For Respondents : Ms.P.Nagalakshmi for R1

R2 – Left without instructions

ORDER

The plaintiff in O.S No.7 of 2023 on the file of the Sub Court, Kulithalai is the revision petitioner herein. The revision petition is directed against the order dated 02.02.2024 in I.A No.2 of 2023 in the suit.



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2.The case of the revision petitioner/plaintiff is as follows :

The plaintiff is the managing partner of a firm running a licensed packaged drinking water unit in Kulithalai. The defendants approached the plaintiff and expressed their interest in becoming their dealer. They, however, insisted on using their brand name “Ocean Waves”. The plaintiff entered into a dealership agreement with the defendants on 19.10.2019. Agreement was to come into force with effect from 14.11.2019 and was valid for a period of three years. It was renewed. Subsequently, the business relationship came under strain. The defendants owed a sum of Rs.7,07,332/-. The plaintiff kept ready the packaged drinking water bottles as per the defendants' specifications but the defendants did not lift them. The packed bottles are remaining in the plaintiff's premises. Since the defendants remained unresponsive, COS No.7 of 2023 was instituted on the file of the Sub Court, Kulithalai on 07.08.2023.

3.Since the goods are perishable in nature, the plaintiff filed I.A No.2 of 2023 for appointment of an advocate commissioner to sell the same. The case of the plaintiff was that he had already packed and labelled the goods as per the defendants' specifications and that they will have to be disposed of in the market at once. Otherwise, they will become unfit for



consumption. The court below concluded that no material has been marked on the side of the plaintiff to show that an agreement was entered into between the parties. It was further observed that in the affidavit filed in support of the petition, it was not mentioned as to when the bottles were filled and when the goods would expire. The court below dismissed the I.A. Challenging the said order, this civil revision petition has been filed.

4.The revision petitioner filed additional typed set of papers enclosing a copy of the dealership agreement dated 19.10.2019. The learned counsel for the petitioner pointed out that due to sheer efflux of time, the goods are past their expiry date and that they may be ordered to be disposed of.

5.The learned counsel for the respondents raised a preliminary objection. According to her, in view of Section 8 of of the Commercial Courts Act, 2015, this civil revision petition itself is not maintainable. She reiterated the reasons set out in the impugned order passed by the court below and called for dismissal of this civil revision petition.

6.I carefully considered the rival contentions and went through the materials on record. Let me deal with the preliminary objection regarding



the maintainability of this civil revision petition. Section 8 of the Commercial Courts Act, 2015 is as follows :

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“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.”

The scope and ambit of this provision was considered by the High Court of Gujarat in *State of Gujarat V Union of India (2018 SCC OnLine Guj 1515)*. It was held therein as follows :

“34..... the bar contained in Section 8 of the Commercial Courts Act against entertaining of civil revision application or petition provided under any other law for the time being in force shall not be applicable with respect to the petitions under Article 227 of the Constitution of India and the same shall not affect the rights of the aggrieved party to invoke the jurisdiction of the High Court under Article 227 of the Constitution of India.”

This decision was followed by the Hon'ble Division Bench of the Madras

High Court in *Ramanan Balagangadharan v M/s. Rise East*

<https://www.mhc.tn.gov.in/judis>



Entertainment Pvt Ltd (2022 SCC OnLine Mad 1300). The uniform view taken by all the High Courts in India is that the bar engrafted in Section 8 of the Commercial Courts Act, 2015 will not apply to the supervisory jurisdiction under Article 227 of the Constitution of India. It had been emphasized that the scope for interference in exercise of this jurisdiction is extremely narrow and limited and that it must be exercised sparingly (Ashok Kumar Puri vs. S.Suncon Realtors Pvt. Ltd. (2021 SCC OnLine Del 5220)).

7. Engrafting bar against exercise of revisional power in relation to an interlocutory order is not unique to civil law. Section 397(2) of Cr.Pc (corresponding to Section 438(2) of Bharatiya Nyaya Sanhita, 2023) also contains a similar bar. It states that powers of revision conferred by subsection (1) of Section 397 shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The expression “interlocutory” occurring in Section 397(2) of Cr.PC had been elaborately considered in more than one decision of the Hon'ble Supreme Court. ***[Madhu Limaye vs. The State of Maharashtra (1977) 4 SCC 551, Amar Nath v. State of Haryana, (1977) 4 SCC 137] and V.C. Shukla vs State (AIR 1980 SC 962)]***. In *Amar Nath*, it was held that the term “interlocutory order” has been used in Section 397(2) of Cr.PC to



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denote orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order.

8. The reason behind the incorporation of such bar in Section 8 of the Commercial Courts, Act 2015 is not difficult to see. The whole object of enacting Central Act 4 of 2016 was to ensure speedy adjudication of commercial disputes of specified value. If at the interlocutory stage, challenges are entertained by the High Courts and trials are stayed, the statutory object would be defeated.

9. A careful parsing of the statutory provision leads one to the irresistible conclusion that the bar would operate only in respect of any interlocutory order of a commercial court including an order on the issue of jurisdiction. If an order falls outside the aforesaid category, then, the bar would not operate. An order passed in an interlocutory application, need not necessarily constitute an interlocutory order. One should not go by the nomenclature. The substance and effect of the order will have to be seen. It was held in the landmark judgment of the Supreme Court in ***Shah Babulal***



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***Khimji v. Jayaben D. Kania* (1981) 4 SCC 8** that orders which possess the characteristics and trappings of finality and which adversely affect a valuable right of a party, or decide an important aspect of the trial will not be purely an interlocutory order. If it decides matters of moment or vital and valuable rights of the parties or work serious injustice to the party concerned, it would not be an interlocutory order.

10. Section 19 of the Family Courts Act, 1984 states that an appeal shall lie from every judgment or order, not being an interlocutory order of a Family Court to the High Court both on facts and on law. Section 26 of the Hindu Marriage Act, 1955 provides for passing interim orders regarding custody of children. In ***Rohit Dandekar vs. Raj Kavitha* (AIR 2003 Kant 511)**, after referring to the decisions rendered in ***Amar Nath, Madhu Limaye and V.C. Shukla***, it was held that an order entrusting custody of the child to the mother could not be considered to be an interlocutory order within the meaning of that term for the purpose of denying appeal remedy under Section 19(1) of the Family Courts Act, 1984.

11. The Delhi High Court in ***Spanhealth care Pvt. Ltd vs. Vishal Sharma* (C.R.P. No 31/2021 dated 16.04.2021)** considered the issue regarding maintainability of a civil revision petition filed under Section 115



in view of Section 8 of the Commercial Courts Act, 2015. The Hon'ble Judge held that the Commercial Courts Act, 2015 has not defined the term “interlocutory order” and that therefore, one has to fall back on the interpretation given in *Shah Babulal Khimji v. Jayaben D. Kania* (1981) 4 SCC 8. The test is to determine the adverse effect on the party concerned and to see if the effect is direct and immediate rather than indirect or remote.

12.A careful reading of the aforesaid precedents lead to two conclusions :

a) The bar contained in Section 8 of the Commercial Courts Act, 2015 will operate only if the order impugned is an interlocutory order. If it can be shown that what has been styled as interlocutory order is in substance not so but one which affects the substantial rights of the parties, the bar will not operate, and revision under Section 115 of CPC will lie. In other words, whether revision under Section 115 of CPC will lie or not has to be decided by applying *Khimji* test.

b) Notwithstanding the bar set out in Section 8 of the Act, petition invoking supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is maintainable subject to the restrictions mentioned in *State of Gujarat vs. Union of India* (supra).



13. Coming to the facts on hand, it is seen that the dealership agreement dated 19.10.2019 entered into between the parties has been enclosed along with the plaint. Even in the counter affidavit filed in I.A No. 2 of 2023, the respondents have admitted that they had invested a substantial sum on the instruction of the plaintiff. This clearly shows that there was some kind of a commercial transaction between the parties. The court below clearly erred in coming to the conclusion that there was no material to show that there was commercial relationship between the parties. The goods in question are perishable in nature. Even packaged drinking water has to be consumed within a certain time frame. It cannot be sold/consumed beyond its expiry date. That is why, the plaintiff wanted an advocate commissioner to be appointed to sell the goods. The perishable nature of the commodities has been mentioned in the I.A prayer itself. The court below ought to have noted that if the I.A is not allowed, the goods will become useless resulting in financial loss. In fact, that has happened in this case. The goods are now past their expiry date. The learned counsel for the revision petitioner submitted that keeping expired goods within their business premises may lead even to cancellation of their license. Such goods will have to be disposed of. I am therefore of the view that this issue has a serious bearing on the valuable rights of the petitioner. The adverse effect on the petitioner is direct and immediate. The impugned order is



therefore not an interlocutory order and hence the objection as regards maintainability of this civil revision petition is rejected.

14. In this view of the matter, the impugned order is set aside. This civil revision petition is allowed. The court below is directed to appoint an advocate commissioner with a mandate to take an inventory of the petition mentioned expired goods and ensure their disposal. The court below shall incorporate appropriate terms in the warrant to be issued to the advocate commissioner.

04.09.2024

Internet : Yes/No

Index : Yes/No

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Issue order copy on 05.09.2024

To

1. The Subordinate Court, Kulithalai.

Copy to : Record Clerk, V.R. Section, Madurai Bench.



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G.R.SWAMINATHAN, J.

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