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C.R.P. (PD) .No.75 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.75 of 2025

and

C.M.P.No.649 of 2025

M/s.Srikals Graphics Pvt. Ltd.,
No.A-27, Sidco Industrial Estate,
Guindy, Chennai – 600 032.
Represented by its Director,
S.Kalyanasundaram

.. Petitioner

Vs.

M/s.Shanthi Corporation,
Office at New No.70 (Old No.29),
2nd Floor Sardar Patel Road, Adyar,
Chennai – 600 020.
Represented through its
Authorised Signatory
P.R.Sivakumar

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the above CRP by setting aside the portion of the impured order dated 18.12.2024 passed by the learned Additional District Judge, Additional Commercial Court, Egmore, Chennai, in



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I.A.No.3 of 2024 in COS.No.137 of 2024 in so far as it relates “to the imposition of condition, directing the petitioner / defendant, to deposit a sum of Rs.17,06,661/- before the Trial Court on or before 09.01.2025”, for the purpose of grant an order of unconditional leave, permitting the petitioner / sole defendant to defend the above suit.

For Petitioner : Mr.T.Umasuthan

ORDER

This civil revision petition challenges the order passed by the learned Additional District Judge, Additional Commercial Court, Egmore, Chennai, in I.A.No.3 of 2024 in COS.No.137 of 2024 dated 18.12.2024.

2.COS.No.137 of 2024 is an Under Chapter suit. It has been presented by the respondent/plaintiff claiming that it made supplies to the defendant and the defendant had defaulted in payment. After following the mandatory provision of Section 12A of the Commercial Courts Act, the suit was taken on file as an Under Chapter suit.

3.On being served with the summons for judgment, the defendant filed an application seeking leave to defend. The defendant took a plea that it is



entitled to an unconditional leave to defend since,

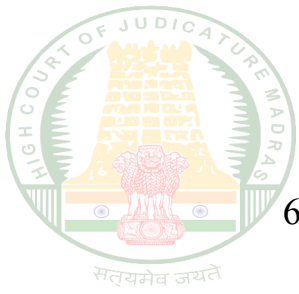
(i)The partnership firm of the plaintiff is unregistered;

(ii)There were no dealings with the plaintiff since 04.02.2020 and therefore, the suit is barred by time;

(iii)The suit invoices are distinct and separate, and each of the invoices gives raise to a separate cause of action and therefore, a single suit clubbing the amounts in all the invoices together is untenable.

4.On notice being ordered, the plaintiff filed a detailed counter. According to the plaintiff, it is a registered partnership firm and hence, the bar under Section 69(2) would not operate. It further pointed out that partial payments have been made by the defendant from 14.02.2020 to 22.03.2021 and therefore, the suit is in time.

5.The learned Judge considered the affidavit and counter and held that the leave to defend application is ordered on the condition that the defendant deposits a sum of Rs.17,06,661/- on or before 09.01.2025, in default, he directed dismissal of the petition.



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6. Aggrieved by the same, the present civil revision petition.

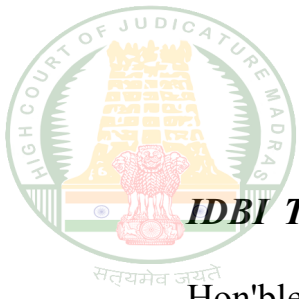
7. I heard Mr. T. Umasuthan for the civil revision petitioner.

8. Mr. T. Umasuthan reiterated the contentions he placed before the Trial Court.

9. He pleaded that as the plaintiff is an unregistered Firm, he has raised a triable issue and therefore, he is entitled to an unconditional leave to defend. He further points out that the suit is *prima facie* barred by limitation. Therefore, the Court ought not to have imposed a condition on the defendant to deposit the entire suit claim. Finally he pleads, the suit does not fall under Order XXXVII of Civil Procedure Code.

10. I have carefully considered the submissions and gone through the records.

11. The position of law with respect to grant of unconditional leave to defend in an Under Chapter suit has been settled by the Supreme Court in



IDBI Trusteeship Service Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568. The

Hon'ble Mr.Justice R.F.Nariman held there are mainly three categories of cases seeking leave to defend under Order XXXVII of Civil Procedure Code.

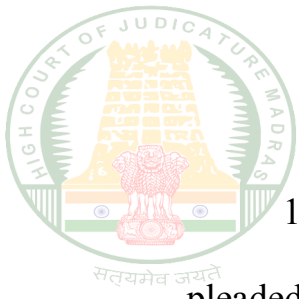
(i)In the first category, the defense raised by the defendant is sterling in character. In such of the cases, the defendant is entitled to unconditional leave to defend.

(ii)The second category of cases are those in which the defense raised by the defendant is absolute moon shine or untenable. In such kind of cases, the defendant is not entitled to any leave at all.

(iii)For cases which fall between these two extremes, the learned Judge held that conditional leave to defend can be granted.

12.Remembering these principles, I approach the facts of the present case.

13.The plaintiff pleads that it is a registered Firm. This is clear from document No.2 filed along with the plaint. Whether it is actually registered or not is a matter for trial.



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14.Insofar as the plea of limitation is concerned, the defendant has pleaded that the suit is barred by time. The plaintiff has pleaded that after supplies were made and before the suit was presented, certain amounts were paid by the defendant, thereby acknowledging his liability under the invoices, which form the basis of the supplies. Limitation is a mixed question of law and fact. Therefore, an issue ought to be framed for the purpose of deciding whether the suit is in time.

15.Insofar as the plea that the suit is not covered under Order XXXVII of Civil Procedure Code, I only have to refer to Order XXXVII Rule 1(2)(b)(i) of the Civil Procedure Code to state that the suit can be maintained on the basis of written contracts.

16.*Prima facie*, for the purpose of disposal of this revision challenging conditional leave, I am convinced that the suit is covered under Order XXXVII.

17.As the defendant has made out a triable issue in the suit, he is certainly entitled to leave to defend.



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18.However, as the pleas are mostly technical in nature, the learned Trial Judge has imposed a condition that leave will be granted on the plaintiff on depositing a sum of Rs.17,06,661/-, which is the amount allegedly due under the invoices.

19.First, this is an exercise of discretion by the learned Commercial Judge, who had the benefit of going through the documents. Normally, a discretionary order is not interfered with by this Court in exercise of powers under Article 227 of the Constitution of India, unless and until it is arbitrary or capricious.

20.Secondly, the supplies itself have not been denied by the defendant. That being the position, the learned Judge has decided to impose a condition that the defendant must deposit the aforesaid sum. I do not find any error in the approach taken by the learned Judge.

21.However, as rightly contended by Mr.T.Umasuthan, the learned Judge has granted only 30 days time to deposit this amount. Being a commercial transaction, such a short time would not be sufficient for a person



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in a business to pull out this amount and deposit it in the Court immediately.

Therefore, while upholding the order granting conditional leave, I am extending the time for deposit from 09.01.2025 to 28.02.2025. The other conditions imposed in the order dated 18.12.2024 in I.A.No.3 of 2024 in COS.No.137 of 2024 are sustained.

22.Subject to the extension of time granted under this order, C.R.P.(PD).No.75 of 2025 is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

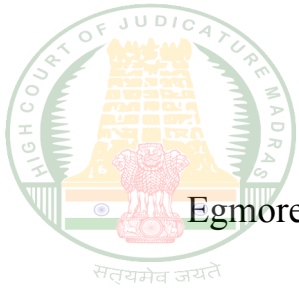
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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Additional District Judge,
Additional Commercial Court,



Egmore, Chennai.

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V.LAKSHMINARAYANAN, J.

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