



Crp.No.113 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.113 of 2025
& C.M.P.No.858 of 2025

PL.Alagumenal Palaniappan

...Petitioner

Vs.

M/s.Sudarshan Foods Private Limited,
Represented by its Director,
Mr.V.S.Pradeep Kumar
Having office at H-Block, Rams Maruthi
No.24, Muthalamman Koil Street,
West Mambalam, Chennai – 600 033

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the order dated 03.01.2025 passed in I.A.No.1 of 2024 in C.O.S.No.58 of 2024 on the file of the Sub-Court, Ambattur.

For Petitioner : Mr.P.J.Sri Ganesh assisted by
S.Aravind

For Respondent : Mr.S.Rajendrakumar



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ORDER

(Parties are referred to in the same ranking as before the trial court)

Challenging the dismissal of the application seeking leave to defend, the defendant is before this Court.

2.The brief narration of the facts necessary for disposing of this civil Revision petition is given herein below:-

The plaintiff had filed the suit O.S.No.58 of 2024 on the file of the Sub Court, Ambattur, against the defendant seeking for recovery of sum of Rs.21,24,206/- together with interest from the date of filing at 18% per annum till the date of realization of principal amount of Rs.11,26,900/-.

3.The contention of the plaintiff is that during the course of their business the plaintiff had placed an order with the defendant for supplying a Sooji/Rava fully automatic FFS packaging machine. Accordingly, the defendant had raised an invoice on the plaintiff company on 19.10.2018 and the invoice value was a sum of Rs.11,26,900/-. This amount was also paid by the plaintiff vide the demand



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draft bearing No.784606 dated 29.11.2018 drawn on the bank of Maharashtra.

The defendant who received the said amount had failed to supply the machinery to the plaintiff. The transactions were carried out by Ashok Iyengar representing the plaintiff company. Ashok Iyengar, the Director of the plaintiff company and Palaniappan, representing the defendant. The plaintiff would submit that despite paying the entire amount, the defendant had not delivered the machinery. The said Ashok Iyengar had met the defendant on several occasions and had requested for refund. However, to no avail. Meanwhile, Ashok Iyengar passed away on 02.10.2022. On his demise, his daughter Vasuprada Iyengar was negotiating with the defendant for refund of the entire sum of Rs.11,26,900/-. Although an assurance was given for refunding the same which is also confirmed vide text messages, the defendant did not come forward to refund the amount constraining the plaintiff to issue a legal notice dated 06.03.2023 calling upon the defendant to pay the said sum together with interest. The defendant had sent a reply on 17.03.2023 containing a details. Therefore, the plaintiff has come forward with the suit in question. The said suit was instituted as an under chapter suit (Summary suit). The defendant had on receiving the summons entered notice of appearance. Thereafter had filed the application seeking relief to defend.



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4.The defendant's contention is as follows:-

a)The suit instituted under Order 37 of the Code of Civil Procedure is not maintainable.

b)The plaintiff has not complied with the provisions of Order 37 Rule 2 (1) of the C.P.C as the plaintiff has made a claim for money which is not supported by any written contract or agreement.

c)As the customary practice the defendant had informed the buyer to get the laminated printed film roll from their laminate supplier for a trial running process before dispatch.

d)The defendant had informed the plaintiff about the machinery being ready.

5.After the demise of Ashok Iyengar his daughter had started demanding refund of the money. The defendant would therefore submit that since they had a case to defend, leave to defend should be granted.



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6.A counter was filed in which it is simply stated that the suit is maintainable under Order 37 and a general denial.

7.The learned Subordinate Judge, Ambattur by his order dated 03.01.2025 rejected the petition for leave to defend on the ground that the defendant has not been able to show proof that the machinery was made ready especially when it is a case of the plaintiff that the machinery was not made ready. That apart the learned Judge had also dismissed the application on the ground that leave to defend application was not filed within the prescribed period and on these grounds had dismissed the leave to defend application. Challenging the same, the petitioner/defendant is before this Court.

8.The learned counsel appearing for the petitioner/defendant would submit



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that nowhere in the invoice is there any agreement for refund of the amount paid for the purchase of the machinery. Therefore, once there is no written document a suit under Order 37 would not be maintainable. An under chapter suit can be initiated only in respect of the clause of suits set out in Order 37 Rule 2 of the Code of Civil Procedure. Therefore, since there is no written document for refund the suit under Order 37 is not maintainable. He would further argue that the non supply of the machinery was only on account of the fact that the plaintiff had not performed their part of the agreement wherein they were supposed to supply laminated printed film roll for a trial running process which has not been done by the plaintiff and the contention of the plaintiff that defendant had agreed for a refund is not supported by proof.

9.Per contra, Mr.S.Rajendrakumar appearing for the respondent/plaintiff would submit that the defendant had not made ready the machinery in time and therefore they had agreed for the refund which they now denied. That apart, the application for leave to defend has been filed with a delay and therefore the impugned order has to be sustained.



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WEB COPY 10. Heard the learned counsels on either side and perused the records.

11. The plaintiff's contention is that the defendant had agreed to supply the machinery which they had failed to supply and therefore the plaintiff would seek refund of the value of the machinery. The plaintiff would also contend that the defendant had agreed for the refund. The suit is filed for recovery of money filed invoking the provisions of Order 37. The claim is for refund of money paid for the manufacture and supply of machinery as per invoice dated 19.10.2018. The reading of the said invoice does not contain any details about the refund.

12. On the contrary as per the invoice 50% was payable as advance and the balance is payable after the trial at the defendant's factory before dispatch. The invoice further provides that for trial, printed packaging film roll should be sent to the defendant at the cost of the plaintiff to their factory. The plaintiff has paid the entire consideration even before the trial and there is also a communication between the defendant and the plaintiff, where under the defendant had asked the plaintiff to supply the laminated roll for trial. All of these are issues which has to be considered in trial and are triable defenses which are available to the



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defendant. Therefore, the defendant cannot be thrown out at the threshold.

Dismissing the leave to defend application is therefore not maintainable and is therefore set aside.

13. Accordingly, the Civil Revision Petition is allowed subject to the condition that 50% of the proforma invoice amount will be deposited within a period of six weeks from today and the suit shall be taken up only after the deposit is made. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order



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To

The Sub-Court, Ambattur.

P.T.ASHA, J.,

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