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C.M.P.No.12045 of 2025 in
Appeal(CAD) No.18 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.P.No.12045 of 2025
in
Appeal(CAD) No.18 of 2025

Gelateria Montecatini Terme
Ice Cream Art India Private Limited
Rep. by its Director Adirano Natalini
Rep. by Power Agent S.Prathab
No.2, Thennanthoppu Street
ECR Main Road, Kottakuppam
Villupuram District, Tamil Nadu
and 2 others.

.. Appellants

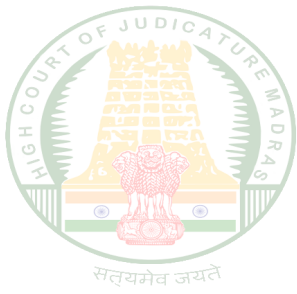
Vs.

Aswath Raj

.. Respondent

For Appellants : Mr.K.Harishankar
For Mr.Krishna Ramanujam

For Respondent : Mr.D.S.Ramesh



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ORDER

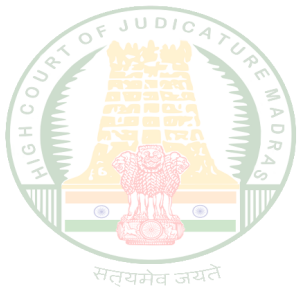
(Order of the Court was made
by the Hon'ble Chief Justice)

Mr.Harishankar is pressing for stay of the judgment.

2. Though in normal circumstances we would have imposed a condition of depositing at least part of the decretal amount, in this case, we would make an exception and not impose any condition.

3. Appellants, who were the defendants in the suit, in the written statement, had raised the issue of jurisdiction. Defendants have made a positive averment that "... present case cannot be filed at Chennai as no cause of action arises at Chennai ...".

4. Mr.Ramesh for respondent, who was the original plaintiff, submits

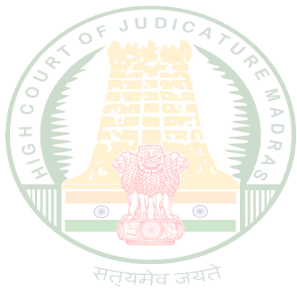


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that when the suit was initially filed in the High Court, leave under Clause 12 of Letters Patent was obtained. Counsel submitted that appellants should have applied for revocation of the leave granted. That was an option available with appellants. But, appellants chose to file a written statement and raised the issue of jurisdiction. The trial Court ought to have framed an issue of jurisdiction and decided whether it had jurisdiction because the leave that is granted was *ex parte* even before the plaint was lodged. No issue of jurisdiction was framed and the issue of jurisdiction has also not been considered even otherwise.

5. Moreover, in the decree, in paragraph 26, it is recorded that a sum of Rs.10,83,200/- was paid by appellants, as admitted in paragraph 35 of the written statement. There is no such admission. In paragraph 26 of the decree, it is also mentioned that amount received from the plaintiff, as admitted by defendants, is Rs.10,00,000/-. It is true that in the written statement, defendants have admitted having received a sum of Rs.10,00,000/-, but have also stated that they have delivered machineries worth Rs.38,86,620/- against which Rs.10,00,000/- was paid. The trial



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Court has not discussed this point or has it dealt with the status of those machineries because if this Rs.10,00,000/- has to be repaid by defendants as decreed, the machineries may have to be returned to defendants/appellants. Shri. Ramesh orally states all machineries were returned, but we find no discussion to that effect in the impugned order.

6. In the circumstances, we are inclined to stay the decree and not to impose any condition. The application is disposed of.

(K.R.SHRIRAM, CJ)

(SUNDER MOHAN,J.)

18.06.2025

kpl