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CRP.Nos.772 & 774 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2025

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THE HONOURABLE MS. JUSTICE P.T. ASHA

CRP Nos. 772 & 774 of 2025

and

CMP.No.4580 & 4585 of 2025

K.Loganayaki

Rep by Power Agent

A. Manikanda Prabhu

.... Petitioner in both the CRPs

Vs

1.Kamlesh Sevantilal Kuriya

2. M/s.Alice Blue Commodities (P) Ltd.,

Rep by its Director,

Corporate Office at:

No.153/2,3rd floor,

M.R.B.Arcade, Bagalur Main Road,

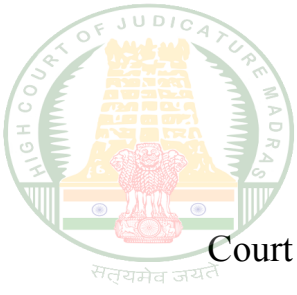
Dwarka Nagar, Yelahanka

Bengaluru 560063.

....Respondent in both CRPs

Prayer in CRP.No.772 of 2025: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in IA.No.4 of 2024 in OS.No.50 of 2024 dated 27.01.2025 on the file of the Commercial Court (District Judge Cadre) Coimbatore.

Prayer in CRP.No.774 of 2025: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in IA.No.3 of 2024 in OS.No.50 of 2024 dated 27.01.2025 on the file of the Commercial



CRP.Nos.772 & 774 of 2025

Court (District Judge Cadre) Coimbatore.

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For Petitioner(s): Mr.A.Parthasarathy
in both cases for M/s.A.Parthasarathy and Associates

COMMON ORDER

These Revisions are filed by the plaintiff challenging the order passed in I.A.No.3 of 2024 and 4 of 2024 in O.S.No.50 of 2024 pending on the file of the District Judge, Commercial Court in the Court of District Judge, Coimbatore. I.A.No.3 of 2024 is filed to amend the plaint. I.A.No.4 of 2024 is filed for a direction to the 2nd respondent /defendant to appear in person and produce the petition mentioned documents.

2. To understand the grievance that has been espoused by the plaintiff in this revision petition, it is necessary to briefly allude to the facts of the case.

3. The parties herein are being referred in the same ranking as referred before the trial court.



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4. The plaintiff has filed a suit in O.S.No.50 of 2024 for recovery of a sum of Rs.67,72,411/- from the 1st respondent with interest at the rate of 24% on the aforesaid sum from the date of suit till the date of realisation. The petitioner would contend that she is a sub broker of the 2nd defendant and has been carrying on business since 2015 successfully. The 1st defendant is the client of the plaintiff and has been trading in stocks and commodities since the year 2015. He was also trading in commodity derivatives and inter alia trading in the crude oil futures contracts market at the Multi Commodity Exchange.

5.The 2nd defendant is the main broker and there is a Memorandum of Understanding between the plaintiffs and the 2nd defendant. The terms of this MOU entered into between the plaintiff and the 2nd defendant is that in case, while the account of any of the client of the plaintiff goes into pure debit while trading under the plaintiff, who is the sub broker under the 2nd defendant, the profit that is due to the plaintiff from the 2nd defendant would be deducted and the plaintiff, in turn, could collect the same from the client. The plaintiff has also filed the said Memorandum of Understanding as document No.6 along with the plaint.



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6. It is also the trade practice that in 'future's' trade, a person can trade more than the amount he has in his account. On 20.04.2020, though the 1st defendant only had a sum of Rs.17,81,970/- in his account, he purchased the crude oil and traded to the tune of Rs.35,01,000/-, however, on account of a steep fall in prices of crude oil, the plaintiff suffered a loss of 67,72,411/-. The 1st defendant's account therefore had a negative balance to the tune of aforesaid sum. As per the trade custom, the first defendant was required to clear out the debit balance within one day from the trading day (T +1), however, he failed to clear the outstanding. The second defendant, as per the terms of the MOU started deducting the amount or profit due to the plaintiff periodically. Despite request and the legal notice dated 28.09.2020, the defendants had failed to pay the said amount. The 2nd defendant had initiated arbitration proceedings and the Arbitral Tribunal had held that the 1st defendant was responsible for the loss. Thereafter, the plaintiff had made an application to the Coimbatore District Legal Services Authority for mediation, however, the 1st defendant refused to participate in the proceedings, pursuant to which, a non-starter report was issued. Therefore the plaintiff was constrained to institute the above suit.



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7. The 1st defendant had filed a written statement inter-alia contending that there was no privity of contract between him and the plaintiff and that she was a complete stranger. He would submit that the loss was on account of the fact that the 2nd defendant had failed to square off the contracts at 5 pm, as per the Circulars, but has square it off at 12 a.m. He would further submit that the Arbitral Tribunal has not decided the dispute on merits and with reference to the mediation proceedings, he would submit that he was not kept intimated about the same. He would therefore seek to have the suit dismissed on the ground of there being no cause of action and no privity of contract between the 1st defendant and the plaintiff.

8. At the stage of arguments and after the completion of trial, the plaintiff had come forward with the above referred interlocutory applications. In both the applications, the reason for moving application is on the ground that the plaintiff has now come to learnt that there is a collusion between the 1st and 2nd defendants and in support of I.A.No.4 of 2024, the plaintiff would further submit that the document namely, MOU and sub broker ledger is in possession of 2nd defendant and the same has to be produced.



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9. The 1st defendant has filed the counter *inter alia* contending that the application is highly belated and the plaintiff having taken a stand that the 2nd defendant was a formal party, against whom, no claim was being made, now seeks to plead the defence that there is a collision between the 1st and 2nd defendants. The fact that the plaintiff was not making any claim against the 2nd defendant is not only pleaded, but is also reiterated during the evidence on plaintiff side in the deposition of PW1. The fact that the application is moved at this stage only goes to show that the plaintiff wants to drag on the proceedings. Therefore, he had sought for dismissal of the application.

10. The learned Commercial Judge, after hearing both parties, had proceeded to dismiss the applications on the ground that the amendment would result in the nature of the suit being changed. Further with reference to the application demanding the documents from the 2nd defendant, the learned Judge had observed that the summoning of witnesses had taken place prior to the trial and the trial having been completed and the matter now being posted for arguments, the filing of the application is clearly an after thought and cannot be permitted. Therefore, it dismissed both the applications. Challenging the same, the revision petitioner is before this



11. Heard Mr.A.Parthasarathy, learned counsel for the petitioner arguing for an admission.

12. Since the issues and pleadings involved in both these applications are more or less the same over-lapped, a common order has been passed.

13. The plaintiff in her plaint has taken a definite stand that he has no claim against the 2nd defendant. The relief claimed is only against the 1st defendant and not the 2nd defendant. The plaintiff has also pleaded that the 2nd defendant is deducting the profit to set off the pure debit in tune with the terms of the MOU. Though the amounts are being deducted by the 2nd defendant, she has chosen not to make a claim against the 2nd defendant and in para No.9 of the pleadings, she would state as follows:

' On the other hand, the plaintiff's broker, viz, the 2nd defendant, has been regularly and periodically deducting the amount of profit due to the plaintiff from the 2nd defendant in lieu of the amount (debit) which the 1st defendant had to pay. Since, the plaintiff has to continue



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CRP.Nos.772 & 774 of 2025

her business with Aliceblue Financial Services, she has no other option other than allowing her profit to be deducted in lieu of the debit of the 1st defendant, i.e., the amount which the 1st defendant needs to pay for the pure debit.'

14. Therefore, a conscious decision has been taken not to make any claim against the 2nd defendant. Now at the stage of arguments, these admissions are sought to be overturned by introducing the amendment.

In para 15 of the plaint, it has been stated as follows:

'The plaintiff has no claim against the 2nd defendant, but as the 2nd defendant is a necessary party, it has been arrayed as a formal party though the plaintiff has no claim against the 2nd defendant.'

which has been detailed in the petition in I.A.No.3 of 2024.

15. In and by this amendment, the plaintiff would make the second defendant also accountable for the loss created by the 1st defendant and in the relief column, she wants a relief as against the 2nd defendant as whole. Such an amendment which gives rise to a new case cannot be permitted and has been rightly rejected by the court below. As regards the order in I.A.No.4 of 2024, the plaintiff has gone to court pleading that MOU is between herself



and the 1st defendant. The same has been referred to in para No.3 of the plaint and that apart, the MOU has been filed along with the plaint. A copy of the MOU has been filed as the 6th document.

16. As per Order 11, Rule 14 CPC, the plaintiff could have very well sought for the production of these documents from the 2nd defendant, however, the plaintiff has chosen to let go all this opportunity. Thereafter, before framing of issues under Order 13, Rule 1 CPC, the parties are required to produce all the documentary evidence that is available and at this point of time, the plaintiff could have demanded the production of the original document from the 2nd defendant. Even then, such a demand has not been made after the framing of issues under Order 16, Rule 6 of CPC.

17. The plaintiff could have taken steps to summon the 2nd defendant for producing this document. This opportunity has also not been availed by the plaintiff. After having taken a conscious decision that there was no claim against the 2nd defendant when the matter is posted for arguments, this application has been taken out which is clearly an after thought and an attempt to dilate the proceedings. The learned trial court has rightly rejected the said



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petition. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitioners are closed.

26-02-2025

msr
Index: yes/no
Internet:yes/no

To
The Commercial Court (District Judge Cadre) Coimbatore.



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P.T. ASHA, J.

msr

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