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C.R.P.No.2387 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..07..2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2387 of 2025

and

C.M.P.No.13800 of 2025

Esvaran Food Mills Private Limited,
Rep. by its Managing Director,
Plot No.6/5 & 6/6, M.M.D.A. J.J. Nagar West,
Chennai 600 037.

..... Petitioner

-Versus-

1.Sri Vinayaga Agency,
Rep. by its Managing Partner,
Mohanapriya Nagar,
Guduvancherry,
Chennai 603 202.

2.Sree Labhm Depot,
Rep. by its Proprietor Mr. Vikas Kumar Jain,
No.112, First Floor, Nainiappa Naicker Street,
Park Town, Chennai 600003.

3.M/s. Ebutor Distribution Pvt. Ltd.,
Rep. by its Managing Director,
H.No.11-13-184/16/4, Plot No.25/6, Road No.3,
Green Hills Colony,
Saroornagar,
Hyderabad 500035.

..... Respondents

Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order dated 14.10.2022 made in I.A.No.2 of 2021 in O.S.No.5338 of 2021 by the learned XXI Assistant Judge, City Civil Court, Chennai.



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For Petitioner : Mr.S.S.Swaminathan

For Respondent(s) : Mr.N.Vanaraj for R1

ORDER

This Civil Revision Petition is filed challenging the order dated 14.10.2022 passed in I.A. No. 2 of 2021 in O.S. No. 5338 of 2021 on the file of the learned XXI Assistant Judge, City Civil Court, Chennai, whereby the petition seeking leave to defend the suit was dismissed.

2. The suit was filed by the 1st respondent as a summary suit under Order XXXVII Rules 1 and 2 of the Code of Civil Procedure. The revision petitioner is the 3rd defendant; the 1st respondent is the plaintiff; and the respondents 2 and 3 are the 1st and 2nd defendants in the suit.

3. For the sake of convenience and to avoid confusion, the parties in this revision petition will be referred to as per their ranking before the trial court.

4. The said suit was filed for recovery of a sum of Rs.1,77,645/-, being the amount due on account of returned unsold stock to the 3rd defendant, from defendants 2 and 3 jointly and severally, together with interest at the rate of 18% per annum from the date of the plaint till the date of realization.



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5. It is the contention of the 1st respondent/plaintiff that in the year 2019, the 2nd defendant approached the plaintiff for the distribution of his products. After deliberations and discussions, an agreement was entered into between the plaintiff and the 2nd defendant for the sale of the latter's products. Pursuant to the said agreement, the plaintiff had been purchasing the products of the 2nd defendant from the 1st defendant on a cash payment basis and distributing them to retailers in the Guduvancherry area, Chennai. Subsequently, the plaintiff terminated the contract and returned the unsold goods purchased from the 2nd defendant to the 3rd defendant. Hence, the plaintiff filed the present suit under summary procedure for recovery of the amount due in respect of the returned unsold stock from the 3rd defendant.

6. The 3rd defendant filed an application seeking leave to defend the suit on the ground that the agreement was exclusively between the plaintiff and the 2nd defendant and that the 2nd defendant is a tenant under the 3rd defendant as per an agreement dated 30.05.2019. It was contended that the plaintiff had returned the alleged unsold goods to the 2nd defendant's godown, and the same was received and acknowledged only by the 2nd defendant. The 3rd defendant specifically denied any privity of contract with the plaintiff.

7. The said application was, however, dismissed by the trial court, thereby refusing to grant leave to defend the suit for recovery of money. Challenging the said



order, the present Civil Revision Petition has been filed.

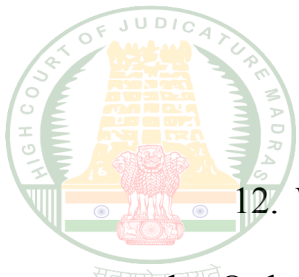
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8. This court heard both sides.

9. The learned counsel for the 3rd defendant submitted that there was no privity of contract between the plaintiff and the 3rd defendant, and that the 3rd defendant had no connection whatsoever with the alleged business arrangements between the plaintiff and defendants 1 and 2. Nevertheless, a decree came to be passed against the 3rd defendant consequent to the dismissal of the application seeking leave to defend the suit. It was contended that the trial court erred in dismissing the said application, and that such dismissal has caused grave prejudice to the 3rd defendant. The trial court ought to have granted leave to the 3rd defendant to defend the suit.

10. The learned counsel for the plaintiff, on the other hand, contended that since the goods had been received by the 3rd defendant, he is liable to pay the amount claimed. He further submitted that the present revision petition is not maintainable in law.

11. In support of his contentions, the learned counsel for the plaintiff placed strong reliance on the judgment of this Court in *V. Vijayakumar v. S. Pradeep Kumar* [C.R.P. (NPD) No. 1100 of 2019, dated 03.02.2022].



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12. While dealing with an application seeking leave to defend a suit filed under Order XXXVII Rules 1 and 2 of the Code of Civil Procedure, the court must assess whether there is bona fide on the part of the defendant in seeking leave to defend the suit and whether there exists a substantial and genuine defence. Only when the application lacks bona fides and the defence appears to be illusory, sham, or merely nominal, can leave be denied. However, where a valid and plausible defence is raised, the Court ought to lean in favour of granting leave in order to afford the defendant an opportunity to contest the suit on merits.

13. From a perusal of the pleadings in the plaint, it is evident that the entire business transaction was between the plaintiff and defendants 1 and 2. The attempt to fasten liability on the 3rd defendant is solely based on the allegation that the goods were delivered at his premises on behalf of the 2nd defendant. However, the 3rd defendant has specifically contended that the goods were received only by the 2nd defendant, who was a tenant under him. This is a matter that warrants adjudication, and the existence or absence of privity of contract between the plaintiff and the 3rd defendant can be determined only upon appreciation of evidence during the course of trial. Therefore, the trial court ought to have granted leave to the revision petitioner/3rd defendant to defend the suit.

14. Though a learned Single Judge of this Court has held that a revision is not



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maintainable, it is relevant to note that an order refusing to grant leave to defend the suit is not appealable. Such an order is revisable, and therefore, the present Civil Revision Petition is maintainable. Only if the decree itself is put to challenge, an appeal would lie. However, when the application seeking leave to defend has not been properly adjudicated and discretion has not been exercised judiciously, and where the refusal is based only on technical grounds, such an order is revisable under Article 227 of the Constitution of India by the High Court.

15. In the present case, the 3rd defendant has raised a substantive defence by disputing the existence of privity of contract with the plaintiff and asserting that the transaction was exclusively between the plaintiff and the 2nd defendant. Although the goods were allegedly delivered at the premises of the 3rd defendant, the pleadings indicate that they were received solely by the 2nd defendant, who is his tenant. This defence raises triable issues that go to the root of the plaintiff's claim. Therefore, the judgment of this Court in *V. Vijayakumar* is distinguishable on the facts of the present case.

In the result, the Civil Revision Petition is allowed. The impugned order dated 14.10.2022, refusing to grant leave to defend the suit, is set aside. The revision petitioner/3rd defendant is granted leave to defend the suit. The learned XXI Assistant Judge, City Civil Court, Chennai, shall invoke his powers under Order



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XXXVII Rule 4 of the Code of Civil Procedure and set aside the ex parte decree dated 14.10.2022 passed against defendants 2 and 3, which came to be passed consequent to the dismissal of the interlocutory application seeking leave to defend the suit. The learned Judge shall thereafter proceed to hear and dispose of the suit on merits, within a period of four months from the date of receipt of a copy of this order or production of a web copy thereof. No costs. Consequently, the connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no

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To

1.The XXI Assistant Judge, City Civil Court, Chennai.



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N.SATHISH KUMAR.J.,

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