



WEB COPY

CRP Nos.1421, 1412 & 1



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28-04-2025
PRONOUNCED ON : 16.06.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

CRP Nos.1421, 1412 & 1203 of 2025
and
CMP Nos.8365, 8322 & 7248 of 2025

1. A.K.Saravanan
S/o.Kittusamy, NO.15, R.Mohan Nagar, Nachathira Classic,
Kalapatti Village, Coimbatore and 3 Others

2.R.Kalpana
W/o.A.K.Saravanan, NO.15, R.Mohan Nagar, Nachathira
Classic, Kalapatti Village, Coimbatore

3.K.Kitusamy
S/o.Kuppusamy, NO.129, Kala Gounden Thottam,
Akkaraipati Village, Palani Taluk, Dindugul District

4.K.K.K.Ravindranath
S/o.Kandasamy, No.25, KPK Pannai Illam, Karatatipalayam
Post, Gopichettipalayam

Petitioner(s) in all cases

Vs

M.Pandithurai
S/o.Late Manickam, Res at V-24, Rangas
Thriyambava, Kalapatti Village, Coimbatore

Respondent(s) in all cases

**PRAYER in CRP No.1421 of 2025:**

WEB COPY Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 13-03-2025 passed in I.A.No.4 of 2024 in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore.

PRAYER in CRP No.1412 of 2025:

Civil Revision Petition filed under Article 227 of the Constitution of India to strike of the plaint in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore.

PRAYER in CRP No.1203 of 2025:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.12.2024 passed in I.A.No.4 of 2024 in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore, insofar as, the condition imposed to furnish security for the suit claim.

For Petitioner(s)
in all cases

: Ms.Chitra Sampath, Senior Counsel
for Mr.M.Ashwin Kumar

For Respondent(s)
in all cases

: Mr.K.V.Babu



COMMON ORDER

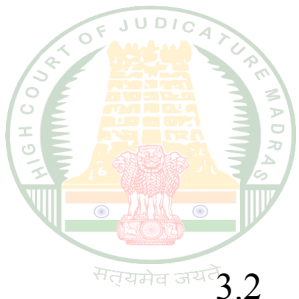
WEB COPY

While the civil revision petitions in C.R.P.Nos.1203 & 1421 of 2025 have been filed by the defendants to set aside the orders dated 18.12.2024 and 13.03.2025 passed in I.A.No.4 of 2024 in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore, respectively, the civil revision petition in C.R.P.No.1412 of 2025 has been filed by the defendants to strike of the plaint in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore.

2. The parties are being referred to in the same ranking as before the trial Court.

3. Before proceeding to discuss the grounds, on which, the defendants seek to strike of the plaint, it would be apposite to briefly allude to the facts as set out in the plaint in O.S.No.1014 of 2024 on the file of the III Additional District Court, Coimbatore, as below:

3.1 The above referred suit has been filed for recovery of a sum of Rs.23,84,11,886/- together with interest at the rate of 24% per annum from the date of the plaint till the date of realization.



WEB COPY

3.2 It is the case of the plaintiff that the defendants 1 and 2, Rishi Ganesh, plaintiff's son and Meenakshi Sundar were partners of the firm called 'Sri Saravana Constructions'. The third defendant is the father of the first defendant and father-in-law of the first defendant. The fourth defendant is the father of the second defendant and father-in-law of the first defendant.

3.3 The plaintiff would contend that he is engaged in the business of Highways contract with the Government of Tamil Nadu as an 'A' Class Contractor. The first defendant is also a Contractor with the Highways Department of the State of Tamil Nadu since 2013. The first defendant has approached the plaintiff with a request to jointly operate the contracts through the firm 'Sri Saravana Constructions' and after negotiations, a partnership agreement was entered into, in and by which, Rishi Ganesh, the plaintiff's son and Meenakshi Sundar, the plaintiff's cousin, had been inducted as partners along with the defendants 1 and 2 and Iyyappan. Rishi Ganesh, at that point in time, was a minor. After he had attained majority, a revised deed was executed on 30.04.2020. The firm Sri Saravana Constructions is a registered firm and the bank accounts were to be operated by the first defendant jointly with Rishi Ganesh and all the contracts and other official documents were to be signed by both the first defendant and the said Rishi Ganesh till 13.07.2021.



WEB COPY

3.4 The plaintiff would further contend that in order to develop the business of the partnership firm, he had arranged for financial assistance from his friends, S.Ramachandran of Pudhukottai, S.Selva Saravanan also of Pudhukottai and Saravanan of Coimbatore. That apart, the plaintiff had also contributed his personal funds for the partnership firm. By reason of the infusion of these funds, the firm had signed various contracts with the Highways Department at Tiruppur, Ottanchatiram, Palani and Mettupalayam and was doing very well. However, due to certain differences of opinion among the partners, it was decided that the business would be continued by defendants 1 and 2 and the said Rishi Ganesh and Meenakshi Sundar would retire. It was further agreed that the defendants 1 and 2 would settle the amounts, which was lent by the plaintiff and which he had brought in from third parties as well. In furtherance of this agreement, Rishi Ganesh and Meenakshi Sundar had retired.

3.5 The plaintiff would submit that since he had suspected foul play in the accounts, he had on 13.07.2021 addressed a complaint to the Manager of the Canara Bank, Palani Branch, to block the internet banking service of the firm with respect to the five bank accounts standing in the name of the firm. He would further submit that



with the help of the internet banking, the first defendant had swindled several crores of the firm. Thereafter, a memorandum of joint compromise agreement was entered into on 18.10.2021 between the plaintiff and the defendants, whereunder, the defendants had jointly agreed to settle the amounts due to the plaintiff. The parties had no objection to the first defendant continuing the business after Rishi Ganesh and Meenakshi Sundar had resigned.

3.6 Further, the plaintiff would submit that under this memorandum of joint compromise agreement, the defendants had agreed to settle the following amounts:

- (1) Rs.3,42,50,000/- payable to the plaintiff constituting the amount that he had contributed to the firm;
- (2) Rs.7,54,38,666/- payable to Ramachandran of Pudhukottai, from whom, the plaintiff had borrowed the amounts for the sake of the firm together with interest at 18% per annum;
- (3) Rs.5,37,00,000/- payable to Selva Saravanan of Pudhukottai, from whom, the plaintiff had borrowed the amounts for the sake of the firm together with interest at 21% per annum;
- (4) Rs.2,16,00,000/- payable to Saravanan of Coimbatore, from whom, the plaintiff had borrowed the amounts for the sake of the firm together with interest at 24% per annum;.

Although the defendants had undertaken to pay the above amounts, however, the



undertaking was observed in the breach. The plaintiff also came to learn that the first defendant had withdrawn funds using cheques without the joint signature of Rishi Ganesh. Despite several demands made for payment of the outstanding amounts, the defendants had not come forward to settle the dues. On the contrary, it has given rise to several litigations between the plaintiff and the defendants.

3.7 It is the contention of the plaintiff that the memorandum of joint compromise agreement dated 18.10.2021 also finds a mention in these litigations. Since the amounts were not forthcoming, the plaintiff had approached the Court by filing a summary suit in O.S.No.1014 of 2024.

3.8 The defendants, on entering appearance, had filed I.A.No.4 of 2024 seeking unconditional leave of the Court to defend the suit. In the affidavit filed in support of the said application, the defendants would deny the allegations contained in the plaint. They would submit that the suit filed as a summary suit is not maintainable as the plaint does not fall under the mandatory provisions as provided in Order XXXVII Rule 1 and 2 CPC. The suit is not in the nature of a mere recovery of money, since there was no lender-borrower relationship between the defendants and plaintiff. Further, the defendants 3 and 4 were no in way related to the business carried on by the defendants 1 and 2 along with the plaintiff's son and cousin. The defendants had also pleaded non-joinder of necessary parties, inasmuch as, even according to the plaintiff, it was his son



Rishi Ganesh, who was jointly operating all the bank transactions of the firm and he had not been made party to the proceedings. Further, the firm 'Sri Saravana Constructions', in which, the said Rishi Ganesh was a partner has not been impleaded as party to the proceedings.

3.9 The defendants would further submit that the execution of the memorandum of understanding dated 18.10.2021 was related to the day to day affairs of the firm. The partners Rishi Ganesh and Meenakshi Sundar are third parties to the memorandum of understanding, which itself would clearly show that the memorandum of understanding was entered into under pressure and the defendants have been coerced into entering into the said agreement.

3.10 The defendants would contend that they had been running the business peacefully and after the induction of the plaintiff's son and cousin as the partners of the firm, there was a repeated interference in the day to day affairs of the firm by the plaintiff and he had gone to the extent of freezing the financial flow of the firm. The plaintiff has no *locus standi* to claim the amounts due to Ramachandran, Selva Saravanan and Saravanan, as he has not been authorized by the said persons to recover the money.

3.11 The defendants would further contend that even assuming that admittedly



the memorandum of understanding was voluntarily entered into, even then, the memorandum contains reciprocal promises and without performing his part of the contract, the plaintiff cannot claim money on behalf of the third parties.

WEB COPY

3.12 The defendants would submit that in the release deed executed by Rishi Ganesh and Meenakshi Sundar on 18.10.2021, they have admitted their investment amount as Rs.1,11,00,000/- and not Rs.27,78,50,000/- as pleaded by the plaintiff. Even as per the memorandum of understanding dated 18.10.2021, it has been admitted by the defendants that only a sum of Rs.3,42,50,000/- was due to the plaintiff and admittedly, a sum of Rs.3,11,50,000/- was paid by cash on 11.03.2022 to the plaintiff, for which, a receipt has also been issued on 11.03.2022. Further, a sum of Rs.88,50,000/- was paid by way of RTGS to the account of the plaintiff's company viz. Hariway Lines Private Limited. Even after the receipt of this amount, the plaintiff neither returned the security cheques nor had handed over the account statement having the entries of the investment of himself and his men named in the memorandum of understanding. The defendants would claim that they have paid a sum of Rs.20,25,000/- each to the plaintiff on 10.04.2022, 10.05.2022 and 11.06.2022, which comes totally to the tune of Rs.60,75,000/- by way of RTGS.



3.13 The defendants would further submit that on verification of the bank account, they were shocked to learn that only Ramachandran has invested monies to the firm and none else. From 01.08.2019 to 06.11.2022, the total investment by the plaintiff and his men comes to the tune of Rs.19,34,00,000/-, but, the defendants have paid in excess to the plaintiff and on coming to know about the same, a complaint to the Inspector of Police, Peelamedu Police Station, was given regarding the illegal activities of the plaintiff including the non-production of bank accounts details and non-return of cheques.

3.14 Further, the defendants would submit that the plaintiff has attempted to misuse the blank cheques given as security and that the plaintiff has not provided the statement of accounts relating to the amounts received by the plaintiff. Therefore, they are entitled to unconditional leave to defend the suit.

3.15 Initially, by order dated 18.12.2024, I.A.No.4 of 2024 was allowed and unconditional leave was granted on condition that the defendants should furnish security for the suit claim on or before 09.01.2025, failing which, it was stated that the leave granted would automatically stand revoked. Thereafter, the records would show that by order dated 13.03.2025 the leave granted was revoked, since the conditional



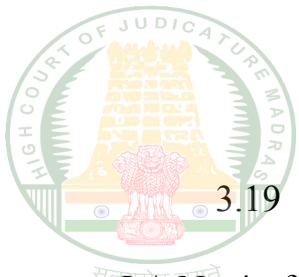
order has not been complied with.

WEB COPY

3.16 Aggrieved by the aforesaid orders dated 18.12.2024 and 13.03.2025 passed in I.A.No.4 of 2024 in O.S.No.1014 of 2024, the defendants have filed C.R.P.No.1203 of 2025 and C.R.P.No.1421 of 2025, respectively.

3.17 The defendants have filed **C.R.P.No.1412 of 2025** seeking to strike of the plaint in O.S.No.1014 of 2024 on the ground that the said suit is an abuse of process of law, inasmuch as, the plaintiff has circumvented the procedure contemplated under the Commercial Courts Act, 2015 (for brevity "the CC Act") by instituting the suit as an ordinary suit and not as a commercial dispute.

3.18 The defendants would submit that it appears that the plaintiff is attempting to overcome the mandate of pre-mediation settlement as contemplated under Section 12A of the CC Act, wherein, the pre-mediation is compulsory. The defendants would further submit that Section 12A of the CC Act makes pre-mediation mandatory and failing to adhere to this procedure would render the suit to be rejected at the threshold. That apart, the suit is based on the memorandum of joint compromise agreement and it partakes all the ingredients of a commercial dispute and therefore, they sought to have the plaint rejected.



WEB COPY

3.19 The defendants have challenged the order dated 18.12.2024 passed in I.A.No.4 of 2024 by filing **C.R.P.No.1203 of 2025** on the ground that the learned Judge has imposed an onerous condition while granting leave and there is absolutely no reasoning given. The defendants would submit that the plaintiff has filed the suit admittedly for recovering amounts, which are due to the third parties as well and these third parties have not initiated any proceedings. Once the right of the plaintiff to claim the entire amount is questioned in the light of the fact that the amounts have come in from the third parties, the suit itself is not maintainable and consequently, the conditional leave granted has to necessarily be set aside and unconditional leave granted.

3.20 The defendants have challenged the order dated 13.03.2025 passed in I.A.No.4 of 2024 by filing **C.R.P.No.1421 of 2025** on the ground that the docket order rejecting the security offered is totally erroneous, since the security offered is sufficient to satisfy the suit claim. The defendants would submit that the learned Judge, while revoking the leave and rejecting the security offered has not given any reasons for revoking the leave. The learned Judge has simply stated that the security offered is insufficient. The order had been passed in haste and that apart, the very order granting leave on condition that the entire suit claim should be furnished as security is *per se* erroneous, inasmuch as, the plaintiff cannot institute a suit for recovering amounts due



to the third parties without these third parties filing any claim against the defendants.

They would further submit that the suit itself is a bad for non-joinder of necessary parties, inasmuch as, the persons, from whom, the plaintiff claims that he has received money, have not been made parties to the proceedings.

4. Heard Ms.Chitra Sampath, learned Senior Counsel for Mr.M.Ashwin Kumar, learned counsel for the petitioners/defendants and Mr.K.V.Balu, learned counsel for the respondent/plaintiff.

5. The learned counsel on either side have addressed common arguments for all the revisions and have also filed common written arguments for all these civil revision petitions and the same has herein below set out.

6. The learned counsel for the petitioners/defendants would make the following submissions:

6.1 The suit is instituted under the provisions of Order XXXVII Rule 1 & 2 CPC for recovering a sum of Rs.23,84,11,886/- together with interest at the rate of 24% per annum from the date of plaint till the date of realization. The cause of action and the



genesis of the suit is the memorandum of joint compromise agreement dated 18.10.2021 allegedly executed by the defendants and the plaintiff.

WEB COPY

6.2 The Court below has failed to consider the fact that the defendants have *prima facie* made out a case that there are triable issues and therefore, ought to have granted unconditional leave.

6.3 A perusal of the memorandum of joint compromise agreement dated 18.10.2021 reveals that only a sum of Rs.3,42,50,000/- is payable to the plaintiff and the defendants have totally paid a sum of Rs.4,60,75,000/- over and above the money that is payable to the plaintiff. The receipt of the sum of Rs.4,60,75,000/- has been acknowledged by the plaintiff himself. The memorandum of joint compromise agreement not only deals with the money payable to the plaintiff, but, also the monies that are due to three other persons *viz.* Ramachandran, Selva Saravanan and Saravanan. The plaintiff has not received any authorization from these persons for recovering money from the defendants and therefore, the institution of the suit by the plaintiff is not maintainable.

6.4 The trial Court ought to have seen that the issue as to whether the plaintiff



can claim the amounts due to the third parties is the triable issue. That apart, the statement of accounts have not been filed into the Court and therefore, the order directing to furnish security for the entire suit claim is an onerous condition and practically amounts to decreeing the suit.

6.5 The counsel would rely upon the judgment in *Trois Corporation in HK Ltd Vs. National Ventures Pvt Ltd*, wherein, the Supreme Court has set aside the onerous condition to deposit 75% of the suit amount to set aside the *ex parte* decree by holding that the said condition to be disproportionate.

6.6 By filing an undertaking affidavit by the defendants pursuant to the order of the trial Court dated 18.12.2024 does not in any manner deprive or extinguish the defendants' right to challenge the said order.

6.7 In support of this argument, the counsel would rely upon following judgments:

- *Wada Arun Asbestos Private Limited vs Gujarat Water Supply and Sewerage Board*¹; and
- *Shivsu Canadian Clear International Limited vs Freightcan Global Logistics Private Limited*².

6.8 The counsel would question the filing of an ordinary suit when the dispute

1 (2009) 2 SCC 432

2 2013-2-L.W. 949



arises out of a partnership agreement, which is commercial in nature. Reliance was placed on the judgment of the Supreme Court in ***Namita Gupta vs Suraj Holdings Limited***³. The plaintiff would come within the ambit of the term 'financier' as contemplated under Section 2(1)(c)(i) of the CC Act, as he had lent money over a period of time.

6.9 That apart, since the trial Court does not have the jurisdiction to entertain the dispute, acquiescence cannot be pleaded by the defendants and the plaint deserves to be struck off.

7. *Per contra*, the learned counsel for the respondent/plaintiff would make the following submissions:

7.1 The order in I.A.No.4 of 2024 had been passed after hearing both the parties and the leave was granted on condition that the defendants should furnish security for the suit claim on or before 09.01.2025, failing which, the conditional leave granted would stand revoked.

7.2 The defendants on 09.01.2025 had filed an affidavit disclosing the security containing three items of property, wherein, it was stated that the properties were under

3 (2024) 312 DLT 242



mortgage with the Canara Bank and therefore, the plaintiff had immediately filed a memorandum of objection stating that the properties, which already had a charge, cannot be taken as security and thereafter, the matter was adjourned for valuation and since no valuation report was received on 13.03.2025, considering the objections of the plaintiff and taking note of the fact that security had not been furnished, the leave was revoked.

7.3 C.R.P.No.1203 of 2025 is not maintainable in the light of the fact that the defendants have already given an affidavit of undertaking to provide security. After having undertaken to provide security as ordered, it does not lie in the hands of the defendants to now challenge the conditional order leave granted on 18.12.2024 in I.A.No.4 of 2024.

7.4 As regards C.R.P.No.1421 of 2025, the same has been filed challenging the consequential order dated 13.03.2025 passed in I.A.No.4 of 2024 and once again, after having given an affidavit of undertaking, the defendants cannot renege on the undertaking. The memorandum of understanding dated 18.10.2021 has been accepted by the defendants in a connected suit in O.S.No.214 of 2023, which was filed for mandatory injunction. Since the defendants had accepted to settle the entire claim, it was in this circumstance, the trial Court was of the opinion that the plaintiff's interest would be protected if a conditional order of leave was granted. Therefore, the



defendants have no legs to challenge the consequential order dated 13.03.2025 passed in I.A.No.4 of 2024 and consequently, C.R.P.No.1421 of 2025 has to be dismissed.

WEB COPY

7.5 With reference to C.R.P.No.1412 of 2025, which is a revision filed to strike of the plaint in O.S.No.1014 of 2024, he would submit that the plaintiff has made a sufficient cause of action for filing the suit and that apart C.R.P.No.1412 of 2025 has been filed on the ground that the suit is commercial in nature as per Section 2(1)(c)(xv) of the CC Act, as the dispute is arising out of the partnership firm and the suit is based on the memorandum of joint compromise agreement dated 18.10.2021. A perusal of clause 10 of the memorandum of joint compromise agreement would show that the defendants have agreed to settle the entire dues to the plaintiff and on settling the dues, he is entitled to return the security cheques. The contents of the agreement would clearly show that it is not commercial in nature. That apart, after having accepted to settle the entire sum to the plaintiff, the defendants cannot now call the transactions commercial in nature, since there is no commercial activities involved. These issues are being raised by the defendants for the first time and the same have not been raised before the Court below.

7.6 The suit is based only upon the memorandum of joint compromise agreement. The suit is not based upon the partnership agreement, as set out by the



defendants. The parties to the *lis* and the parties to the memorandum of joint compromise agreement are not partners in any event. Therefore, the plaint cannot be struck of.

7.7 The defendants were directed to produce the valuation report in respect of the documents of the properties that was being offered as security. Valuation report has been obtained on 24.10.2024 after filing of the suit. As regards the three properties that had been offered as security, the defendants had stated that these properties are also the subject property of the mortgage under a memorandum of title deeds.

Discussion:

8. Before considering the correctness or otherwise of the orders passed in I.A.No.4 of 2024, which are the subject matter of C.R.P.No.1203 of 2025 and C.R.P.No.1421 of 2025, it would be necessary to first decide C.R.P.No.1412 of 2025 filed to strike of the plaint, as any decision taken in this revision would have a direct bearing on the other revisions.

9. The revision petition to strike of the plaint has been filed on the premise that the suit is a commercial dispute falling within the provisions of Section 2(1)(c)(xv)



of the CC Act. Before discussing the aforesaid provisions, it would make useful reading, if the provisions of Section 2(c) (i), (xv) and (xvii) are herein below extracted:

WEB COPY

“2.Definitions

(1) In this Act, unless the context otherwise requires,-

....

(c) “commercial dispute” means a dispute arising out of -

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(xv) partnership agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semi-conductor integrated circuits;”

Likewise Section 6 of the CC Act makes it clear that the Commercial Courts deal with commercial disputes.

10. The main fulcrum of the argument of the defendants is that the disputes arise in respect of a partnership firm from out of a memorandum of joint compromise agreement dated 18.10.2021 and this memorandum relates to the partnership agreement. Therefore, at the outset, it is necessary to analyse if the compromise is one relating to the partnership business.

11. A perusal of the preamble of the memorandum of joint compromise



agreement would indicate that for the development of the firm “Sri Saravana Constructions”, the plaintiff had borrowed money from his friends S.Ramachandran of Pudhukottai, S.Selva Saravanan also of Pudhukottai and Saravanan of Coimbatore and has also given his money as a loan to the firm. Further, a reading of Clause 3 to 6 would describe that amounts as a loan. Therefore, it is clear that the amounts have been given as a loan to the firm “Sri Saravana Constructions”. The memorandum of joint compromise agreement would further read that the son of the plaintiff, Rishi Ganesh and the plaintiff's cousin, Meenakshi Sundar would retire from the firm and the first defendant would continue the firm by himself. The defendants 2 to 4, under this memorandum undertook to settle the amounts due to the persons, who have lent the money, and the amounts were payable to the plaintiff for and on behalf of the lenders.

12. That apart, the plaintiff had produced a plaint filed in O.S.No.214 of 2023 on the file of the III Additional District Court, Coimbatore, which is a suit filed by the defendants in the instant suit and the firm for a direction to the plaintiff, his son Rishi Ganesh, cousin Meenakshi Sundar to hand over documents described in the schedule to the plaint and the account statements from 08.01.2019 to 18.10.2022 and for an injunction restraining the defendants therein from using the documents. In the plaint, the defendants herein have admitted the loan, but would state that the amounts are



repayable by the firm (which is not the language of the deed concerned) which states that the defendants 1 to 4 should repay it.

WEB COPY

13. Therefore, from the above referred clauses of the memorandum and the plaint in O.S.No.214 of 2023, it is clear that the amounts given by the plaintiff is only a loan advanced by the plaintiff by himself as well as by sourcing it through his friends. By signing this memorandum, the defendants have undertaken to repay the said sum, which had been advanced to the firm. Therefore, the suit filed is simplicitor a suit for recovery of money due under the memorandum of joint compromise agreement dated 18.10.2021 and would therefore, not be covered by the provisions of Section 2(1)(c)(xv) of the Act.

14. Another argument that was made was that the plaintiff is a financier and therefore, the provisions of Section 2(1)(c)(i) would apply. Even this argument has to be rejected as the defendants have themselves described the plaintiff as a Highways Contractor and it is not their case that the plaintiff is ordinarily carrying on business as a financier.

15. Therefore, the very basis on which the defendants have sought to strike of the plaint is not available to them. **Hence, CR.P.No.1412 of 2025 has to necessarily be**



WEB COPY

16. Since C.R.P.No.1412 of 2025 has been dismissed, the veracity of the orders, which is the subject matter of C.R.P.Nos.1203 & 1421 of 2025 has to be analysed.

17. The defendants are aggrieved by the fact that after the Court below has come to the conclusion that the defendants have a triable issue, the learned Judge committed a grave error in imposing the onerous condition that the defendants should furnish security to the tune of the suit amount.

18. The arguments advanced by the defendants are that only a sum of Rs.3,42,50,000/- is payable to the plaintiff and the defendants have already paid over a sum of Rs.4,60,75,000/-. Further, the plaintiff does not have the *locus standi* to recover the amounts owed to third parties and this issue of *locus standi* has been held to be a triable issue by the III Additional District Judge, Coimbatore. Therefore, the onerous condition imposed for grant of leave to defend the suit has to be necessarily set aside. The defendants would also submit that the memorandum of understanding filed by the defendants would not be a bar to challenge the order impugned in I.A.No.4 of 2024.



WEB COPY

19. That the plaintiff has procured financial assistance from third parties and has himself extended similar assistance has been admitted by the defendants themselves in their plaint in O.S.No.214 of 2023 on the file of the III Additional District Court, Coimbatore. This suit is filed before the filing of the instant suit. In the said plaint, it is stated as follows:

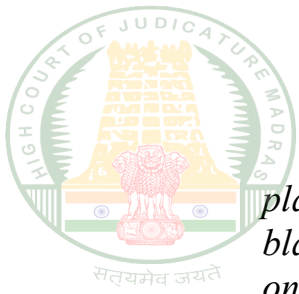
“5. As per the terms of the said Memorandum of Understanding dated 18./10/2021,

i) it was agreed that the 1st defendant had invested Rs.27,78,50,000/- in the Fir, out of which he had already been paid a sum of Rs.14,36,00,000/- from the firm and that out of balance amount of Rs.13,42,50,000/-, a sum of Rs.3,75,00,000/- shall be deposited in account of defendants 2 & 3 and a sum of Rs.6,25,00,000/- shall be given as cash to the 1st defendant. Thereafter, the remaining balance of Rs.3,42,50,000/- shall be paid in 6 months.

ii) It was further agreed that from and out of the loans borrowed from various persons for the firm, after deducting the payments so far made, the 1st plaintiff firm shall be repay the balance out standings of following persons within 6 months:

- 1. Ramachandran, Pudukottai - Rs.7,45,38,666/-*
- 2. Selvarasaravanan, Pudukottai - Rs.5,37,00,000/-*
- 3. Saravanan, Coimbatore - Rs.2,16,00,000/-*
- 4. M/s.Skill Plus (Supplier) - Rs.2,61,00,000/-*

With regard these loans, at the time of compromise talks held on 18/10/2021, the 1st defendant strangely insisted that the plaintiff shall handover number of signed blank cheques and promissory notes to him. He promised to keep them only as security and not to present for collection and that after payment of their dues, he will return those signed blank cheques and promissory notes to the



WEB COPY

plaintiffs. Believing his words, the plaintiffs handover several signed blank cheques and pro-notes to the 1st defendant which are meant only as security and to show their bonafied. Those cheques are more fully mentioned in the Schedule of this plaint. ”

The defendants further stated in the plaint that pursuant to the memorandum of understanding dated 18.10.2021, they have paid a part of the amounts agreed therein *i.e.* a sum of Rs.4,60,75,000/- to the plaintiff and the arrangements were being made to pay the other persons, who have also agreed to extend the time for repayment. Therefore, the defendants have clearly admitted the borrowals and that only a sum of Rs.4,60,75,000/- had been repaid.

20. In this regard, when the memo of valuation in the instant case (O.S.No.1014 of 2024) is perused, it can be seen that the sum of Rs.4,60,75,000/- has been given credit to and a balance of Rs.23,84,11,886/- is stated to be due. As to whether the plaintiff can recover the amounts due to the third parties is an issue that has to be decided in the suit as well as the issue of non-joinder of parties. The only question that now engages the attention of this Court is whether the Court below was right in granting conditional leave that the defendants should furnish security to the tune of the suit claim.

21. In the affidavit filed in support of the leave to defend application, the



defendants would submit that they had paid Rs.4,60,75,000/-, but, the plaintiff did not hand over the accounts showing the investment. Therefore, the defendants stopped further payment. The defendants would also contend that a perusal of the bank account of the firm would reveal that only Ramachandran has paid amount to the firm and from 01.08.2019 to 06.11.2022, the total amount invested by the plaintiff is only a sum of Rs.19,34,00,000/-, towards which, a sum of Rs.26,00,06,532/- has been paid by the defendants.

22. From the contents of the affidavit filed in support of the leave to defend petition, it is seen that there are legal proceedings both criminal and civil between the parties.

23. In the counter filed by the plaintiff, apart from denying the various allegations in the affidavit filed in support of the leave to defend application, he would contend that since the defendants have admitted the execution of Doc.No.1, memorandum dated 18.10.2021, the defendants are bound to settle the said sum to him. Therefore, he would pray that they are not entitled to an unconditional stay.

24. This would clearly indicate that the plaintiff's case is that since the



execution of the agreement is admitted, the defendants can only be granted conditional leave.

WEB COPY

25. The learned III Additional District Judge, Coimbatore, had observed that the defendants have raised a valid defense regarding the *locus standi* of the plaintiff to recover the amounts due to third parties and has also observed that there is nothing to show that the plaintiff had paid these third parties the amount paid by them to the firm. That apart, these amounts have been lent to the firm (which is not impleaded as a party) when the plaintiff's son and cousin were partners, they have not been made parties to the memorandum of understanding or in the suit. This despite the fact that the recitals of the memorandum contains an undertaking that they will retire from the partnership. The third parties to whom monies are said to be due, have not been made parties to the proceedings. In fact, they are not parties to the memorandum of understanding well. Therefore, there are several triable issues that arise in the above suit and the defense is neither illusory nor a moonshine. Therefore, the order directing the deposit of the entire suit claim as a condition for granting leave to defend appears onerous especially when the right of the plaintiff to recover amounts due to third parties is in issue. There is no reason given in the order dated 18.12.2024 passed in I.A.No.4 of 2024 as to why conditional leave was granted after the learned Judge has observed that there is a triable



WEB COPY

26. In the judgment relied upon by the plaintiff in ***Wada Arun Asbestos supra***, the learned Judges were considering the issue as to whether a revision petition would lie against an order granting conditional leave and held that a civil revision petition would lie against an order granting conditional leave. The learned Judges also considered earlier judgments, where the principles for grant of leave in a summary suit was set out. In ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation***⁴, the learned Judges have set out the principles as follows:

“(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a

⁴ (1976) 4 SCC 687



WEB COPY

defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

In the judgment of the Apex Court in ***Sify Ltd. Vs. First Flight Couriers Ltd.***⁵, these principles have been reiterated in paragraph no.11 of the judgment.

27. On a reading of these principles, it is clear that where the defendant has been able to establish a valid defense, which is neither illusory nor a moonshine, leave

⁵ (2008) 4 SCC 246



should be granted unconditionally. **Therefore, the order dated 18.12.2024 has to be set aside and C.R.P.No.1203 of 2025 be allowed.**

WEB COPY

28. The subsequent order dated 13.03.2025 (subject matter of C.R.P.No.1421 of 2025) is nothing but a consequential order and once this Court has found that the order of conditional leave to defend is onerous, the consequential order should also fail. **Therefore, C.R.P.No.1421 of 2025 has also to be allowed.**

29. It is seen that the properties, which have been offered as security by the defendants *vide* their affidavit dated 09.01.2025 are Item Nos.4, 5 and 6 of the properties, in respect of which, the plaintiff has sought attachment before judgment. In the affidavit dated 09.01.2025, the defendants have undertaken not to alienate/encumber/transfer the same.

30. *Ex consequenti*, this Court passes the following orders in the above revisions:

- i. C.R.P.No.1412 of 2025 is dismissed;
- ii. C.R.P.Nos.1203 of 2025 is allowed and consequently, C.R.P.No.1421 of 2025 is allowed;
- iii. The properties that have been described in the affidavit of understanding dated 09.01.2025 filed in I.A.No.4 of 2024 as also the valuation report shall not be



CRP Nos.1421, 1412 & 1_____

alienated/transferred or in any other way dealt with without orders of the Court till the disposal of the suit;

- iv. The defendants shall file their written statement within a period of fifteen days from the date of receipt of a copy of this order; and
- v. The learned Judge shall endeavour to dispose of the suit in O.S.No.1014 of 2024 within a period of four months therefrom.

16-06-2025

nsd

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes; Neutral Citation:Yes/No

To

The III Additional District Judge,
Coimbatore.



WEB COPY



CRP Nos.1421, 1412 & 1203 of 2025

P.T.ASHA J.

nsd

Pre-delivery order made in
CRP Nos.1421,1412 & 1203 of 2025

16.06.2025