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C.R.P.(PD)No.2705 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.2705 of 2024
and C.M.P.No.14545 of 2024

M/s.THW INTERNATIONAL Unit-I,
Rep by its Proprietor,
Mr.Periyankuppam Mohamed Abdul Wajid,
No.123/N, Valayampet,
Old Vaniyambadi, Tirupathur – 635751,
Tamil Nadu.

.. Petitioner

Vs

M/s.Meghdoot Export Import Pvt. Ltd.,
Rep by its Authorized Officer
Mr.Amitab Doshi,
Office at Old No. 140, New No. 24,
Vepery High Road, Periamet,
Chennai – 003.

.. Respondent



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the conditional docket order dated 23.02.2024 in the adjudication of the suit in C.O.S.No.131 of 2023 on the file of the learned District Judge, Commercial Court, Chennai and to allow and record the written statement and statement of truth, which is filed by the petitioner.

For Petitioner : Mr.I.Abdul Basith

For Respondent : Mr.C.Nithysh Sekhar

ORDER

This civil revision petition arises against the proceedings of the learned District Judge, Commercial Court, Chennai, in C.O.S.No.131 of 2023.

2.The parties shall be referred to as per their respective ranks in the suit.

3.The civil revision petitioner is the sole defendant in C.O.S.No.131 of 2023. The claim of the plaintiff is that it had supplied



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materials, during the ordinary course of business, to the defendant. The goods were supplied at Vaniyambadi. The defendant did not pay the amounts due, under all, the invoices. Hence, the plaintiff presented the suit seeking for recovery of a sum of Rs.58,56,527/- together with interest at the rate of 18% per annum on the principal sum of Rs.29,93,851/-.

4.Summon was served on the defendant. Originally, he engaged a counsel, who did not file a written statement. Thereafter, a new counsel was engaged, who presented an application, to condone the delay in filing the written statement, along with the written statement.

5.The learned Commercial Judge came to a conclusion that though the defendant had been served with summons on 10.06.2023, he came forward with the written statement only on 10.10.2023. In addition, a petition to condone the delay in filing the written statement was also presented only on 23.11.2023. Hence, invoking Order VIII Rule 1 of the Code of Civil Procedure (hereinafter referred to as Code), as amended by the Commercial Courts Act, 2015, the learned Commercial Judge imposed a condition. The condition being that the defendant should



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deposit a sum of Rs.25 lakhs in a Fixed Deposit for a period of three years and produce the receipt before the Court. In default, he directed that the written statement and the statement of truth cannot be received.

6. Aggrieved by the same, the defendant is on revision before me.

7. I heard Mr.I.Abdul Basith for the civil revision petitioner and Mr.C.Nithysh Sekhar for the respondent.

8. Mr.I.Abdul Basith pleads that the Commercial Court does not have the jurisdiction to impose a condition for receipt of the written statement. In addition, he pleads that the plaintiff has calculated a sum of Rs.29,93,851/- namely, the principal amount twice over and had come forward with the claim of Rs.58 lakhs. He seriously disputes the amount of Rs.29,93,851/- itself. Therefore, he urges that the condition is onerous.

9. Mr.C.Nithysh Sekhar submits that the Commercial Court was constrained to pass the order that it did, because at all stages, the defendant was not interested to proceed with the matter. Originally, it engaged a counsel and thereafter, engaged another counsel. The new



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counsel did not file an application to condone the delay to file a written statement immediately. After it was pointed out by the Commercial Court that the condone delay application was not filed, after 1 ½ months, the application came to be presented. Therefore, he concludes that the order of the Commercial Court deserves to be confirmed and this revision be dismissed.

10. I have carefully considered the submissions of both sides and gone through the entire records.

11. The Code was amended by the Commercial Courts Act, 2015, with effect from 23.10.2015. Commercial Courts established under the Act are duty bound to follow that the Code as it stands amended and not unamended one. In terms of Order VIII Rule 1 proviso to the Code, as amended by Act 4 of 2016, a defendant should file his written statement within a period of 30 days from the date of receipt of the summons. In case, the written statement is not so presented, then the defendant cannot claim as of a right to file one. Between day No.31 to day No.120, it is the discretion of the Trial Court to permit a party to file a written statement.

While exercising this discretion, the Court can impose, such costs as it



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deems fit, as a condition precedent for receipt of the written statement.

Therefore, the plea of Mr.I.Abdul Basith that the Commercial Court does not have the power to impose a condition cannot be entertained in the light of Order VIII Rule 1 proviso.

12. For the mere fact that the Parliament has empowered the Court to impose a condition, a condition cannot be onerous or arbitrary. This is because, being a commercial dispute, if onerous conditions or conditions which are so heavy are imposed, that it will not be possible for the defendant to comply, then the purpose of granting permission to file a written statement itself will be defeated. Therefore, I would conclude that while the Court has powers to impose conditions, the conditions so imposed should be reasonable and not arbitrary.

13. Applying the said principle to the facts of the present case, I find some force in the submissions of Mr.I.Abdul Basith that the claim of the plaintiff has been calculated twice over. This is only a *prima facie* conclusion. I am sure that the learned Commercial Judge will tally the accounts as against the payment made by the defendant, prior to coming to a conclusion, whether the defendant is liable to pay any amount at all



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to the plaintiff or what is the amount that is payable by the defendant.

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14. In paragraph – 5 of the plaint, the plaintiff has shown as of 10.04.2023, the principal amount is Rs.29,93,851/-. The suit was presented on 17.04.2023 i.e. within seven days from the date on which the plaintiff had crystallised the figure as aforesaid. Unless and until the interest is calculated on “daily vatti” or “Kandhu vatti” basis, a sum of Rs.29,93,851/-, by no stretch of imagination, in one week will bloom to Rs.58,56,527/-.

15. Hence, I am inclined to modify the condition alone. Instead of calling the defendant to take a Fixed Deposit for a sum of Rs.25 lakhs, the defendant shall take a Fixed Deposit for a sum of Rs.10 lakhs within a period of four weeks from the date of receipt of a copy of this order. In case, the defendant does not comply with this condition, it will forfeit its right to file a written statement. The other conditions imposed by the learned Commercial Judge are sustained. Subject to modification on the amount of deposit alone, in all other aspects, the order of the learned Judge stands upheld.



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16. After the orders were dictated, Mr.I.Abdul Basith points out that the learned Commercial Judge has closed the evidence of the plaintiff on 19.12.2024. He states that as he was pursuing the revision in C.R.P.(PD)No.4983 of 2024, he represented before the learned Commercial Judge that the matter be adjourned so as to enable the Court as well as the parties to the suit to await the orders in the revision. The learned Commercial Judge was not willing for the course of action suggested by the defendant and had closed the evidence of the plaintiff.

17. I pointed out to Mr.C.Nithysh Sekhar that, in case the defendant is not permitted to cross-examine the plaintiff, there will be absolutely nothing in his defence to be put forth before the Court.

18. Mr.C.Nithysh Sekhar fairly states that on the next date of hearing namely, 07.01.2025 or on the existing date, 08.01.2025, he will direct the plaintiff to be present in Court and he has no objection for the defendant to cross-examine him.

19. The learned Commercial Judge is requested to permit the plaintiff to cross-examine P.W.1 on 08.01.2025 and thereafter close the



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evidence on the side of the plaintiff. The learned Commercial Judge at Chennai must ensure that the defendant complies the condition imposed in this order before permitting the defendant to enter the witness box.

20. With the above directions, the civil revision petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

Index: Yes/No

(1/2)

Speaking order/Non-speaking order

Neutral Citation : Yes/No

Note to Office: Upload order copy on 06.01.2025.

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To

The District Judge, Commercial Court, Chennai.



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V. LAKSHMINARAYANAN,J.

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