



CRP No.3844 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19-08-2025**

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No.3844 of 2025

G.Rama Rathnam

... Petitioner

Vs

1.M/s.S.N.Rathinasamy Nadar & Sons,
a Partnership Firm, rep by its Partners,
No.2/2, Vaidyanathan Street,
Tondiarpet, Chennai-600 081.

2. R.Ravindran
3. S.Vijayakumar
4.Mrs.S.Amsadevi
5.R.Venkatesh

..Respondents

Revision filed under Article 227 of Constitution of India challenging the docket order dated 29.07.2025 made in the suit in O.S.No.2885 of 2025 on the file of XIII Assistant City Civil Court, Chennai, insofar as directing the petitioner/plaintiff to file proof affidavit in lieu of his examination in support of the pleadings.

For Petitioner : Mr.S.R.Rajagopalan
Senior Counsel
For Mr.A.K.Samy

ORDER

Heard Mr.S.R.Rajagopalan, learned Senior Counsel appearing for the revision petitioner.



CRP No.3844 of 2025

WEB COPY

2. The revision petitioner is the plaintiff in O.S.No.2885 of 2025 which has been filed as a summary suit, invoking the provisions of Order 37 of Code of Civil Procedure. The trial Court, despite setting the defendants ex parte, has directed the plaintiff to enter the witness box and file proof affidavit in lieu of chief examination. The said order dated 29.07.2025 is under challenge in the present revision petition.

3. Learned Senior Counsel would invite my attention the provisions of Order 37 of the Code of Civil Procedure, more specifically Order 37 Rules 2 and 3. Relying on the said provisions, learned Senior Counsel would state that once the defendants were served and do not deem it necessary to enter appearance and defend the suit, the decree would automatically follow and referring to the phraseology of the provisions 2 and 3, learned Senior counsel would state that the trial Court ought not to have directed the plaintiff to file proof affidavit, as it was totally unnecessary.

4. I have gone through the order dated 29.07.2025. The fact that the defendants have been served with notice and have not chosen to enter appearance, is an admitted position. In fact, on 07.07.2025, the trial Court



CRP No.3844 of 2025

has set the defendants exparte. The moment, the defendants do not appear and the suit has been instituted under Order 37, the plaintiff is straight away entitled to a decree in terms of Order 37 Rule 2 (ii) of the Code of Civil Procedure. It was not necessary for the plaintiff to enter the witness box and prove the suit claim since the suit has been admitted as a summary suit under Order 37 of the Code of Civil Procedure. The trial Court has clearly erred in directing the plaintiff to prove the suit claim by examining himself and by directing to file proof affidavit in lieu of chief examination.

5. The trial Court has relied on the Division Bench of this Court in ***M/s Golden Communication vs M/s Yapay Payments Fanatical Technologies Private Limited*** in ***Appeal (CAD) No.6 of 2023 dated 29.01.2024***. However, as rightly contended by the learned Senior Counsel for the petitioner, the Division Bench was dealing with the matter, arising out of the Commercial Courts Act and there is specific provision which stipulates that the provisions of the Code of Civil Procedure pertaining to summary suits under Order 37 of Code of Civil Procedure would not apply to Commercial suits. Therefore, the trial Court ought not to have been placed reliance on the said Division Bench judgment, which is not applicable to the facts of the present case.



WEB COPY



CRP No.3844 of 2025

P.B.BALAJI.,J

sr

6. In view of the above, I am inclined to set aside the Docket Order dated 29.07.2025 made in O.S.No.2885 of 2025 and consequently, O.S.No.2885 of 2025 stands decreed as prayed for.

7. In the result, the civil revision petition is allowed. No costs.

19.08.2025

Index: Yes/No

Website:yes/no

Speaking Order/Non-speaking Order

sr

To

The XIII Assistant City Civil Court, Chennai

CRP No.3844 of 2025