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C.R.P.(PD)No.5109 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

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M/s.Fairmacs Shipping and Transport
Services Pvt. Ltd., Rep by its Authorised Signatory,
N.Vijayakumar-Sr.Documentation Executive,
No.47, 7th Street, J Block, Anna Nagar East,
Chennai-600 102. .. Petitioner

Vs

1.M/s.Sond Knit Garments a.k.a Paton Fashions,
Rep. by its Proprietor and Authorised Signatory,
N.Kailasabathi Natarajan alais Mr.Kailash,
No.328/1, Poolakattu Thottam,
Karupararayan street, Tiruppur-641 652.

2.N.Kailasabathi Natarajan alias Kailash .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, for a direction to the learned Principal Judge, Commercial Court at Egmore, Chennai, to take C.O.S.SR.No.113 of 2023 on file and numer the same.



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For Petitioner : Mr.Ajay Francis Inigo Loyola

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ORDER

This civil revision petition challenges the order passed by the learned Principal Judge, Commercial Court at Egmore, Chennai in C.O.S.SR.No.113 of 2023, dated 01.08.2024.

2.The plaintiff is the civil revision petitioner and the defendants are the respondents. The plaintiff presented C.O.S.SR.No.113 of 2023 seeking recovery of a sum of Rs.29,29,026/- together with interest and costs.

3.The case of the plaintiff is that the aforesaid amount is due, for the commercial services, rendered by the plaintiff to the defendants for the period from 06.06.2017 to 23.01.2018. The plaintiff filed a calculation memo to show that the liability was acknowledged on 31.10.2018. Hence, the period of limitation stood extended till 01.11.2021.

4.On account of the order passed by the Supreme Court in *suo motu* W.P.(C)No.3 of 2020, dated 23.03.2020, the Limitation Act stood



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suspended from 15.03.2020 till 30.04.2022. From 01.05.2022 till 31.05.2022, the Courts were closed for vacation. Therefore, the suit ought to have been instituted or at least a request for mandatory pre-institution mediation should have been made on or before 01.06.2022. Unfortunately, for the plaintiff, he sought for mandatory mediation only on 16.11.2022.

5.Taking into consideration the fact that the pre-institution mediation itself was sought only five months after the period of limitation had expired, the Trial Court rejected the plaint even without numbering the suit.

6.Aggrieved by the same, the present revision is at the instance of the plaintiff.

7.I heard Mr.Ajay Francis Inigo Loyola in support of the revision.

8.Mr.Ajay Francis Inigo Loyola pleads that the learned Trial Judge ought not to have rejected the suit at the pre numbering stage. He states



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that narrow and pedantic approach to limitation ought not to have been taken especially considering the fact that the entire world was grieving on account of the onslaught by the pandemic caused due to Covid-19. He also pointed out that just before the presentation of this revision, a sum of Rs.4 lakhs was transferred by the defendants in favour of the plaintiff on 10.09.2024 acknowledging the liability under the invoices. Hence, he pleads that he is entitled to have the suit numbered and proceed in accordance with law.

9.For the purpose of determination of the Court fee, jurisdiction and limitation, the averments made in the plaint alone matter.

10.I have considered the submissions of Mr.Ajay Francis Inigo Loyola for the petitioner. I have carefully gone through the entire records.

11.As far as C.O.S.SR.No.113 of 2023 is concerned, the plaintiff has not pleaded about the payment that has been made by the defendants subsequent to the institution of the suit. The plaintiff could have amended the plaint and have sought for that relief. However, the learned Trial Judge had rejected the suit on 01.08.2024 prior to the payment that was



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made by the defendants.

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12.As argued by Mr.Ajay Francis Inigo Loyola, the learned Judge could have numbered the plaint and thereafter, rejected it. It matters not in the present case, because even if the Commercial Court had numbered the suit, the suit would have still been caught by limitation on the basis of the averments as it stands, when it was presented.

13.At this stage, Mr.Loyola sought for a direction to refund the Court fees paid. I pointed out to Mr.Loyola that he would be entitled for a certificate from the Commercial Court for refund of Court fees, as the suit had been rejected even at a pre numbering stage. Hence, I adjourned the matter to enable him to file an application before the Principal Commercial Court at Egmore seeking for such a certificate. Mr.Ajay Francis Inigo Loyola states that he has filed an affidavit and petition seeking for a certificate to that effect in I.A.SR.No.315 of 2025 on 27.01.2025.

14.The law relating to refund of Court fees has been analysed by a Division Bench of this Court in ***Polyene General Industries Pvt. Ltd. v. Great Western Industries Ltd., 2019 (4) LW 1***. After referring to a Full



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Bench judgment of this Court in *the Official Receiver, Coimbatore v.*

S.A.Ramaswami Gounder and others, AIR 1980 Madras 269, the Court

held that on its administrative side, it has the ministerial powers to issue a certificate that the stamp that had been defaced had not yet been utilised and a certificate can be given to a party for refund. Since the suit had been rejected without numbering, the Principal Commercial Court, Egmore shall number I.A.SR.No.315 of 2025 and apply the judgment that has been referred to above and issue a certificate to the effect that the plaintiff will be entitled for refund of the Court fees paid on the plaint.

15. Needless to add since the plaint has been rejected exercising the power under Order VII Rule 11(d) of the Code of Civil Procedure, it is always open to the plaintiff to institute a fresh civil suit on the same cause of action as per Order VII Rule 13 of the Code, in case the subsequent plaint is able to show that the suit is in time.

16. With the above observations, the civil revision petition stands dismissed. No costs.



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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No

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To

The Principal Judge,
Commercial Court at Egmore, Chennai.

V. LAKSHMINARAYANAN,J.

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