



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.06.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Application No.6539 of 2024
in C.S.(Comm.Div.) No.187 of 2024

East Coast Constructions & Industries Limited,
Represented by its Managing Director,
Buharia Building, 4th floor,
Egmore, Chennai-600 006. ... Applicant/Defendant

-VS-

M/s. Reliable Concrete Company,
A partnership firm,
Duly by its partner Mr.K.Ramesh & Mr.V.Selvakumar
Having registered office at Sutherland Illam,
No.8/10, Mandapam Cross Street,
Kilpauk, Chennai-600 010. ... Respondent/Plaintiff

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules
Read With Order XXXVII Rule 3 of C.P.C., 1908, to grant leave to the
defendant to defend C.S.(Comm.Div.)No.187 of 2024 pending on the file of
this Court.

For Applicant/Defendant : Mr. P.J.Rishkesh

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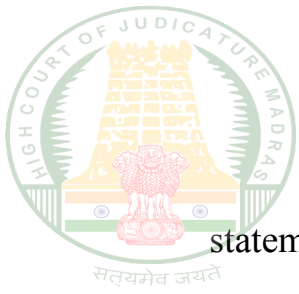
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For Respondent/Plaintiff : Mr. G.Ilamurugu

ORDER

The suit was framed as a summary suit for recovery of a sum of Rs.1,80,00,000/- with interest thereon at 18% per annum. The defendant has filed an application seeking leave to defend.

2. Learned counsel for the defendant submits that the defendant is entitled to unconditional leave on multiple grounds. The first ground raised by learned counsel is that the suit claim is barred by limitation at least insofar as supplies made in the years 2015 and 2016 are concerned. By referring to the plaint, learned counsel points out that the suit claim pertains to multiple purchase orders, each with distinct terms and conditions. In support of this contention, reference is made to paragraphs 4 to 7 of the plaint. The second ground raised by learned counsel is that the suit claim covers supplies made to a distinct entity namely, East Coast Consultants and Infrastructure Private Limited (East Coast Consultants). In support of this contention, learned counsel refers to the list of invoices raised on East Coast Consultants by the plaintiff and to the inclusion of such invoices in the



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statement of account filed by the plaintiff. Learned counsel also submitted that the suit does not fall within the scope of Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 inasmuch as the suit is not based on bills of exchange, hundis, promissory notes or on a written contract, enactment or guarantee.

3. In response to these contentions, learned counsel for the plaintiff submits that the suit is based on a written contract inasmuch as the defendant issued purchase orders and, in acceptance thereof, the plaintiff supplied ready to mix concrete, raised invoices in respect thereof and has placed on record proof of supply in the form of delivery challan. As regards the contention that the suit claim includes supplies made to East Coast Consultants, learned counsel refers to the purchase order issued by East Coast Consultants and points out that the same individual has issued the purchase order both on behalf of the defendant herein and on behalf of the said entity. He also submits that the two entities functioned from the same premises.

4. The first question that falls for consideration is whether the suit is



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maintainable as a summary suit. Undoubtedly, the suit is not based on negotiable instruments such as bills of exchange, hundis or promissory notes. While learned counsel for the plaintiff contends that the suit is for recovery of a debt based on a written contract, learned counsel for the defendant denies the said contention. On perusal of the purchase orders placed on record by the plaintiff, it is noticeable that such purchase orders provide for the acceptance thereof by the plaintiff. The documents, however, do not seem to contain the signature of the plaintiff in acceptance. Whether the written contract is evidenced on consideration of other material documents, such as invoices and delivery challans, is a matter that would require close consideration in course of trial.

5. It is also noticeable that the suit claim covers invoices issued by East Coast Consultants, which, according to the defendant, is a distinct corporate entity. Such invoices appear *prima facie* to have been included in the statement of account filed by the plaintiff in support of the suit claim.

6. Therefore, triable issues arise for consideration in this case,



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including with regard to the existence of a written contract. Consequently, the case falls within the second, if not first, eventuality described in paragraph 33.1 of the judgment of the Supreme Court in *B.L.Kashyap and Sons Limited v. JMS Steels and Power Corporation and another*, (2022) 3 SCC 294. As a corollary, the defendant is entitled to unconditional leave to defend the suit. This application is disposed of on these terms without any order as to costs.

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SENTHILKUMAR RAMAMOORTHY,J.



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