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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-10-2026

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

C.R.P. NO. 3412 OF 2023
{CNR: HCMA011658592023}
AND
C.M.P. NO. 21175 OF 2023

M/s.Sai Associates
A Proprietorship Concern,
represented by its Proprietor -
Mr. Raghava Rao.E,
A6 and 7, SSIA, Vanagaram Road,
Athipet, Chennai 58.

…Petitioner/Plaintiff

-versus-

M/s.Sew Infrastructure Ltd
Represented by its Managing Director, No.6-3-
871 Sneha Lata Green Lands Road, Begum Pet,
Hyderabad 500 016.

…Respondent/Defendant

PRAYER:-

Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the adjudication Order dated August 14, 2023 in the Memo filed in O.S. No. 253 of 2023 on the file of the Subordinate Judge, Ambattur.

For Petitioner(s): Mr. R.Selvakumar

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For Respondent(s): Mr.V.Santharam

O R D E R

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, 1950

2. The revision petitioner herein is the plaintiff and the respondent herein is the defendant in O.S. No.253 of 2023 on the file of 'the Subordinate Court, Ambattur' ['Trial Court' for short].

3. Facts leading to the filing of this Civil Revision Petition are thus:

3.1. The plaintiff originally filed the aforesaid Original Suit before the Subordinate Court, Poonamalle in O.S. No.411 of 2021 seeking recovery of money from the defendant as a Summary Suit under Order XXXVII of 'the Code of Civil Procedure, 1908' ['C.P.C.' for short]. In the plaint, the plaintiff has specifically has mentioned so as per Order XXXVII Rule 2 of C.P.C. The defendant, after service of summons, was set *ex-parte* on November 9, 2022.

3.2. Thereafter, the Original Suit was transferred to the Trial Court and renumbered as O.S. No.253 of 2023. In the Trial Court, the matter

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came to be posted for *ex-parte* evidence on April 6, 2023. Thereafter, the defendant filed I.A. No.1 of 2023 in the Original Suit praying to set aside the *Ex-parte* Order along with a written statement. In view of the endorsement of the plaintiff's Counsel before the Trial Court made in the said Interlocutory Application as to no objection, the Trial Court allowed the Interlocutory Application, set aside the *Ex-parte* Order and took the written statement on file.

3.3. Subsequently, on July 14, 2023, the plaintiff's Counsel filed a memo objecting to the acceptance of the written statement onto the file without following the procedure contemplated under Order XXXVII Rule 3 (3) of C.P.C. The Trial Court on August 14, 2023 rejected the said memo by passing the following the Adjudication / Docket Order:

> *"Memo in OS - On perusal of records bundle received from SC, PNE. Even in this court summon procedure was not followed and no objection was raised by the plaintiff when case posted for written statement. Hence written statement filed. Hence now plaintiff cannot retract to summon [sic] procedure. Memo rejected. For clarification of leave to defend petition, plaintiff counsel present. Memo rejected, Defendant absent. No representation. For issues call on 18.09.2023."*

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3.4. Assailing the same, the present Civil Revision Petition has been filed.

4. Learned Counsel for the revision petitioner / plaintiff submits that the Original Suit was duly filed under Order XXXVII of C.P.C. as a Summary Suit. Summons prescribed under Order XXXVII Rule 2 (2) of C.P.C. [Form No.4 in Appendix B] was duly served on the defendant. The defendant did not appear and hence he was placed *ex-parte* on November 9, 2022. The Subordinate Court, Poonamalle, which was the then Trial Court, upon placing the defendant *ex-parte*, ought to have decreed the Suit under Order XXXVII Rule 2 (3) of C.P.C., but failed to do so and moreover, erroneously went on to post the matter for recording *ex-parte* evidence.

4.1. He would further submit that when the matter was thereafter transferred to the Trial Court, renumbered as O.S. No.253 of 2023 and posted for *ex-parte* evidence, the defendant instituted I.A. No.1 of 2023 and the same was allowed [as elaborated *supra*].

4.2. He would invite attention to Order XXXVII Rule 3 of C.P.C. and contend that, the Trial Court failed to follow the procedure contemplated thereunder. He would contend that the endorsement of no objection made

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by the plaintiff's Counsel before the Trial Court was only for setting aside the *Ex-parte* Order and not for the written statement. In any event, the Suit having been filed duly as a Summary Suit, the Trial Court upon setting aside the *Ex-parte* Order, ought to have directed the defendant to give notice of appearance to the plaintiff's Counsel as contemplated under Order XXXVII Rule 3 (3) of C.P.C. If such a course had been followed, the plaintiff would have served on the defendant a summon for Judgment as per Order XXXVII Rule 4 of C.P.C. [Form No.4-A in Appendix B]. Whereafter, the defendant may choose to file an application seeking leave to defend the Suit and only upon the same being allowed, the defendant can file written statement and not otherwise.

4.3. He would submit that the Trial Court committed a gross error in not following the above procedures set out by law and erred in taking the written statement on file. Accordingly, he would pray to set aside the Adjudication Order passed in the memo and direct the Trial Court to follow the procedure contemplated under XXXVII Rule 3 of C.P.C.

5. In response to the above arguments, learned Counsel for the respondent / defendant would contend that, the defendant filed I.A. No.1 of 2023 along with the written statement [as elaborated above]. By endorsing no objection on the same and receiving a copy of the written statement, the

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plaintiff's side waived off the procedures contemplated under Order XXXVII of C.P.C. and thereby waived off the special status of the Suit. From that point onwards, the Suit is to be treated as an Ordinary Suit and not as a Summary Suit. Considering the same, the Trial Court rightly rejected the plaintiff's memo. There is no irregularity or illegality with the same. Accordingly, the learned Counsel prays to dismiss the Civil Revision Petition with costs.

6. Heard on either side. Perused the materials available on record.

7. For ready reference, Order XXXVII Rules 2 and 3 of C.P.C. are extracted hereunder:

"ORDER XXXVII

SUMMARY PROCEDURE

1. *x-x-x x-x-x x-x-x*

2. Institution of summary suits.—

(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

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(c) the following inscription, immediately below the number of the suit in the title of the suit, namely :—

"(Under Order XXXVII of the Code of Civil Procedure, 1908)."

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

3. Procedure for the appearance of defendant.—

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time

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within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

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(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment, —

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

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(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit."

8. From a perusal of the plaint, averments to the effect that the plaint is filed under Order XXXVII of C.P.C. and to the effect that no relief not falling under the ambit of Order XXXVII of C.P.C. has been claimed, are found along with the necessary inscription below the Suit number. Thereby, Order XXXVII Rule 2 (1) has been duly followed.

9. The next step is summons for appearance and Order XXXVII Rules 2 (2) and 3 (1) of C.P.C. gains relevance at this point. Said Rule 2 (2) provides that summons in a Summary Suit shall be in Form No.4 in

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Appendix B in C.P.C. Said Rule 3 (1) provides that the plaintiff must serve a copy of the plaint and any annexures thereto along with the summon under said Rule 2 (2).

10. There is a misconception that upon institution of a Summary Suit, the plaintiff must first serve summon on the defendant in said Form No.4 for appearance and thereafter, if the defendant enters appearance within 10 days of such service, then the plaintiff must once again serve the said summon along with a copy of the plaint and the plaint annexures if any. That is not the case and bare reading of the said Order XXXVII Rule 3 (1) would clarify it. Said Rule 3 (1) starts with the line "*In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance…*". It is clear that said Rule 3 (1) speaks of any Suit under Order XXXVII of C.P.C. Syntactically, in said Rule 3 (1), it is to be noted that the part relating appearance of the defendant is positioned after the requirement on the part of the plaintiff to serve summon in said Form No.4 along with copy of plaint and annexures thereto. The sequence in which the clauses are arranged, makes it clear that the summons under Order XXXVII Rule 2 (2) must be accompanied by a copy of the plaint

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and the annexures thereto at the first instance itself and that the provision does not contemplate a service of the said summon in Form No.4 for the second time along with the plaint and plaint documents. Further, on a lighter note, the choice of words employed in Order XXXVII Rule 3 (1) supports the above interpretation; said Rule 3 (1) employs the words "summons under rule 2" rather than "a copy of the summon under rule 2", which is in consonance with this Court's interpretation that a copy of the plaint and the plaint annexures must be sent along with the said summon in Form No.4 upon institution of the Suit itself and that the said summon in Form No.4 is not required to be served for the second time. Hence, the aforesaid misconception remains a misconception.

11. In simpler terms, Order XXXVII Rule 2 (2) and Order XXXVII Rule 3 (1) must be read conjointly and a conjoint reading would show that upon institution of a Summary Suit, the plaintiff must serve summon on the defendant in said Form No.4 in Appendix B along with the plaint and the annexures thereto and the defendant may enter appearance within 10 days from receipt of such summons. Said Rule 2 (2) and said Rule 3 (1) are both mandatory provisions in so far as summons is concerned. Upon compliance with the same by the plaintiff *i.e.,* upon serving of said summon in Form No.4 in Appendix B under Order XXXVII Rule 2 (2)

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along with plaint and any annexure thereto, if the defendant fails to enter appearance within 10 days from the date of service, the Trial Court shall pass Judgment under Order XXXVII Rule 2(3) of C.P.C. On the other hand, upon due compliance of Order XXXVII Rule 2 (2) read with Order XXXVII Rule 3 (1), if the defendant appears within 10 days of service, the defendant ought to furnish his address for service before the Court as per Order XXXVII Rule 3(1) of C.P.C. and further, the defendant ought to furnish notice of appearance along with address for service to the plaintiff or the plaintiff's Counsel as per Order XXXVII Rule 3(3) of C.P.C. Whereafter, the plaintiff ought to serve summons for Judgement under Order XXXVII Rule 3 (4) of C.P.C. [Form No.4-A in Appendix B] along with an affidavit verifying the cause of action and the amount claimed and also stating that, there is no defence to the Suit in his/her plea. Upon receipt of the same, within 10 days therefrom, the defendant may choose to pray for leave of the Court to defend the Suit under Order XXXVII Rule 3(5) of C.P.C. and it is then upto the Court to decide if the defendant has any substantial defence or not. If the Court grants leave to defend the Suit conditionally or unconditionally, then the defendant may file a written statement.

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12. If the plaintiff fails to follow the procedures contemplated under Order XXXVII Rules 2 and 3, the Suit would not get dismissed automatically. On the other hand, it would lose its special nature of Summary Suit and would be tried as a Regular Suit. For instance, if the plaintiff fails to serve the plaint and the annexures thereto along with the said summon in Form No.4 in Appendix B and the defendant fails to appear within the stipulated time, then the Suit would not be decreed automatically under Order XXXVII Rule 2 (3) of C.P.C., rather it would proceed as a Regular Suit by placing the defendant as *ex-parte*, recording *ex-parte* evidence and thereafter, passing Judgment on merits.

13. Coming to the case on hand, there are no sufficient evidence or materials available on record before this Court to show whether summon under Order XXXVII Rule 2 (2) of C.P.C. [Form No.4 in Appendix B] was served on the defendant along with a copy of the plaint and the plaint annexures as required under Order XXXVII Rule 3 (1), which is vital for a Suit to be considered as a Summary Suit. Further, I.A. No.1 of 2023 was filed only to set aside the *Ex-parte* Order and does not have anything to do with the written statement. It is on that Interlocutory Application, the plaintiff's Counsel made an endorsement of no objection and hence, technically, it cannot be said that, the plaintiff's Counsel raised no

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objection to taking on record the written statement and thereby conceded to conduct the Suit as a Regular Suit. In view of the above, this Court is inclined to set aside the Adjudication Order dated August 14, 2023 passed by the Trial Court on the memo filed by the plaintiff's side, and to direct the Trial Court to consider the memo afresh in light of the above observations *qua* the procedures contemplated under Order XXXVII of C.P.C.

14. Resultantly, the Civil Revision Petition is **allowed** to the extent indicated above. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Speaking Order
Neutral Citation: Yes

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R.SAKTHIVEL J.

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To

The Subordinate Judge, Ambattur.

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