

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS _____ OF 2024
(Arising out of SLP (C) Nos 4012-4013 of 2024)

M/s Trois Corporation HK Ltd

... Appellant

Versus

M/s National Ventures Pvt Limited

... Respondent

O R D E R

- 1 Leave granted.
- 2 The appeals arise from the orders dated 14 September 2023 and 12 December 2023 of the High Court of Judicature at Madras.
- 3 On 31 October 2019, the respondent filed a draft plaint in CS SR No 139761 of 2020 seeking to recover a sum of Rs 3.42 crores. Together with the plaint, the respondent filed a Judges Summons under Order XIV Rule 8 of the Original Side Rules read with Clause 14 of the Letters Patent of the High Court of Madras and Order II Rule 3 of the Code of Civil Procedure 1908. The Judges summons was numbered as A No 8720 of 2019.
- 4 The petitioner, who is based in Hong Kong, filed its reply dated 9 January 2020 to the Judges Summons before the High Court of Judicature at Madras.
- 5 By an order dated 24 January 2020, the High Court granted the respondent

leave to sue. Pursuant to the order granting leave to sue, the plaint lodged by the respondent in CS SR No 139761 of 2019 was registered on 27 February 2020 as CS No 87 of 2020 before the High Court.

- 6 On 9 March 2022, the Advocate for the respondent issued a communication to the appellant in the following terms :

“To,

M/s TROIS CORPORATION HK LTD
Rep by its Director Ankush Shah
RM 1903, 19/F, Emperor Group Centre
288, Hennessey Road, Wanchai
Hong Kong

My client M/s National Ventures Pvt Limited rep by its Director A. Bhanu Prasad, has filed the suit against you in **CS. No.87 of 2020** and it came up for further hearing on 08.03.2022 before the Assistant Registrar-I (OS) on the file of Hon'ble High Court of Madras was pleased to order private notice to you returnable by 22-03-2022. Kindly take notice and appear on the said date, either in person or through a counsel failing which the matter will be heard and decided off on merits.”

The appellant received a copy of the letter on 14 March 2022.

- 7 By an order dated 02 August 2022, the High Court recorded the submission of the respondent that the suit summons was served on the appellant on 14 March 2022 and directed that the suit should proceed *ex parte*. On 30 August 2022, an *ex parte* decree was passed against the appellant by the High Court.
- 8 On 21 June 2023, the appellant received a notice that the respondent had commenced execution proceedings in Hong Kong.

- 9 Aggrieved by the *ex parte* decree, the appellant filed a Judges Summons, *inter alia*, under Order XIV Rule 8 of the OS Rules and Order IX Rule 13 of the Code of Civil Procedure on 15 July 2023 for setting aside the *ex parte* decree. An application for condonation of delay was also filed. A response was filed by the Respondent.
- 10 On 14 September 2023, a Single Judge of the High Court directed that the *ex parte* decree shall be set aside subject to the appellant depositing 75% of the suit claim within a period of four weeks. Subject to compliance with the above term, the application for condonation of delay in filing the application to set aside the *ex parte* decree was allowed.
- 11 The order of the Single Judge was carried in appeal before the Division Bench. The appeal was dismissed on the ground that it was not maintainable.
- 12 The proceedings have travelled to this Court.
- 13 Order IV of the Madras High Court Original Side Rules deals with the institution of ordinary suits and service of summons. Rule 1 stipulates that a suit shall be instituted by presenting to the Registrar a plaint in Form No 5 of Appendix II containing the particulars prescribed by the Code. The plaint is to contain a list of the of documents which have been filed. Rule 2 stipulates that the plaintiff shall, together with the plaint, bring into Court a sufficient number of copies of the plaint and summons in duplicate and an application for service on the parties concerned. In terms of Rule 3, after the plaint is admitted, the Registrar or other officer of the Court shall issue summons to the defendant to appear,

and if the defendant is resident out of the jurisdiction, he shall transmit the same to the proper local court or authority for service. Rule 4 requires the Registrar or the officer to endorse in the margin of the summons the date on which it is issued and the dates on which the plaint was presented and filed. Rule 5 provides that :

“R.5 Unless otherwise ordered and except as otherwise provided for by these rules, every summons shall require the defendant, if he intends to defend the suit, to enter an appearance and to file a written statement within six weeks after service of the summons upon him.”

14 Rule 6 contains the following provisions :

“R.6 In the following cases the Registrar may alter the form of summons by inserting in place of the said period of fourteen days periods not exceeding those hereunder mentioned :

- (a) In the case of a defendant residing outside the local limits of the ordinary original civil jurisdiction of the Court but within the limits of the State of Tamil Nadu six weeks;
- (b) deleted
- (c) In the case of a defendant residing beyond the limits of India, three months.”

15 Rule 7 provides that the summons shall be in Form No 13 in Appendix II, with such variations as the circumstances may require. The summons has to be served within the stipulated period and in the case of a defendant to be served outside the city of Madras within such time as the Registrar may fix and endorse. Sub-rule (3) of Rule 7 provides that notwithstanding anything contained in Order V of the Code for the service of summons, where an advocate has entered

appearance in an interlocutory proceeding, service of summons in the suit may be made on the advocate on behalf of the party. Rule 8 stipulates that the plaintiff shall be entitled to serve the defendant with summons in the suit by post registered for acknowledgment in addition to service in the manner prescribed.

- 16 In the present case, that after the plaint was lodged in the Registry of the High Court (numbered at that stage as CS SR No 139761 of 2020), an application for leave to sue the appellant, who had its office outside the jurisdiction of the High Court was moved. The application for leave to sue was allowed by an order dated 24 January 2020. On 9 March 2022, a notice was issued by the advocate for the respondent to the appellant recording that the suit (referred to as Suit No 87/2020) came up for further hearing on 8 March 2022 before the Assistant Registrar-I (OS) who ordered the service of private notice on the appellant returnable on 22 March 2022. The appellant was set down *ex parte* on 2 August 2022. An *ex parte* decree was passed on 30 August 2022. While the appellant had appeared before the High Court at the stage when leave to sue was granted, the Rules framed by the High Court on the Original Side contain specific provisions for the issuance of summons. It is admitted during the course of the hearing that no summons, apart from the notice which was issued by the advocate for the respondent to the appellant on 9 March 2022, was issued by the Registry of the High Court. The provisions of the OS Rules relating to service of summons on a defendant who resides or carries on business outside the jurisdiction were not complied with.

17 Order V Rule 25 of the Code of Civil Procedure contains specific provisions in regard to service where the defendant resides out of India and has no agent.

Order 5 Rule 25 is reproduced below :

“25. Service where defendant resides out of India and has no agent.—Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the Court is situate:

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

18 The Rules of the High Court also contain specific provisions where the defendant resides beyond the limits of India. Rule 6(a) allows the Registrar to alter the form of summons, where a defendant resides beyond the limits of the country by permitting appearance within a period of three months. Under Rule 7, the summons has to be in Form 13 specified in Appendix II. as set out in Rule 7 of the OS Rules. Rule 7(3) provides that where an advocate has entered appearance in an interlocutory proceeding, service of summons in the suit may

be made on the advocate on behalf of the party.

19 In the present case, the appellant had appeared before the High Court at the stage when leave to sue was sought by the respondent. Leave to sue was granted on 24 January 2020. It was over two years thereafter on 9 March 2022 that an advocate's notice was issued to the appellant. From the advocate's notice, it is evident that the requirement of the High Court OS Rules, which have been noted earlier, were not complied with. The Advocate's notice contained no annexures or documents. It is not evident from the suit number referred to in the notice whether it was the same plaint in respect of which leave to sue had been granted two years earlier.

20 In this backdrop, the order of the High Court directing a deposit of 75% of the suit claim as a condition precedent for condoning the delay and for setting aside the *ex parte* decree was unwarranted. The ends of justice would have been met if an order of costs was imposed on the appellant as a condition precedent for condoning the delay and for setting aside the *ex parte* decree. Imposing a requirement of a deposit of 75% of the suit claim is disproportionate and would have to be set aside.

21 We, accordingly, allow the appeals and while setting aside the impugned orders of the High Court, we direct that :

- (i) The appellant shall deposit in the Registry of the High Court of Judicature at Madras an amount of Rs two lakhs towards costs payable to the respondent on or before 31 March 2024;

- (ii) Conditional on the deposit of costs as quantified above, the delay on the part of the appellant in filing an application for setting aside the *ex parte* decree shall stand condoned and the *ex parte* decree passed by the Single Judge of the High Court shall stand set aside;
- (iii) In the event of any default on the part of the appellant to comply with the condition (i) above, the appellant shall lose the benefit of this order; and
- (iv) On the restoration of the suit, the written statement which has been filed by the appellant shall be taken on the record.

22 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
March 04, 2024
GKA

ITEM NO.27

COURT NO.1

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4012-4013/2024

(Arising out of impugned final judgment and order dated 14-09-2023 in A No. 4314/2023 12-12-2023 in OSA(CAD)SR No. 142321/2023 passed by the High Court Of Judicature At Madras)

M/S. TROIS CORPORATION HK LTD.

Petitioner(s)

VERSUS

M/S. NATIONAL VENTURES PVT. LIMITED

Respondent(s)

(IA No.21174/2024-CONDONATION OF DELAY IN FILING and IA No.21173/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 04-03-2024 These petitions were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Huzefa Ahmadi, Sr. Adv.
Mr. Abhishek Bharti, Adv.
Mr. Vishal Seth, Adv.
Ms. Rashmi Singh, Adv.
Ms. Aarti Mahto, Adv.
Mr. Rohan Sharma, Adv.
Mr. Balaji Srinivasan, AOR

For Respondent(s) Mr. M. Yogesh Kanna, AOR
Ms Monica Saini, Adv.
Mr. Vasu Kalra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

2 The Appeal is allowed in terms of the signed order.

3 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)