IN THE COURT OF THE JUDGE COURT OF SMALL CAUSES AND A.C.J.M, AT BENGALURU

DATED THIS THE 24th DAY OF JULY-2024

PRESENT:

Sri. Shambhulingayya Mudimath,B.Com.,L.L.B (Spl)
JUDGE, SCJ, ACJM & MACT

SC. No.252/2023

Plaintiff	M/s.India Garage, Having Office at VST VISTAS, No.01, Palace Cross Road, Bengaluru – 560 020. Rep.by its DGM – HR HS Vijay **(By Sri. Abhishek Ramesh- Adv.)**
	-Vs-
Defendant/:	Sree Annapurneshwari Timber & Plywood, 6th Block, No.3508, Sir M Vishweshwaraiah Layout, Bengaluru – 560 091. Rep. By its Proprietor Manikata.G **(Exparte)** Sri. Manikanta.G., Proprietor, Sree Annapurneshwari Timber & Plywood, 6th Block, No.3508, Sir M Vishweshwariah Layout Bengaluru – 560 091. **(By Sri. N.Kumar - Adv.)**
Applicant:	Sree Annapurneshwari Timber &

Plywood, 6th Block, No.3508,
Sir M Vishweshwaraiah Layout,
Bengaluru – 560 091.
Rep. By its Proprietor Manikata.G

(Exparte)

Sri. Manikanta.G.,
Proprietor,
Sree Annapurneshwari Timber &
Plywood, 6th Block, No.3508,
Sir M Vishweshwariah Layout
Bengaluru – 560 091.

(By Sri. Abhishek Ramesh- Adv.)

V/S

Respondent: M/s.India Garage,
Having Office at
VST VISTAS,
No.01, Palace Cross Road,
Bengaluru – 560 020.
Rep.by its DGM – HR HS Vijay

(By Sri. N.Kumar - Adv.)

Provision under which the application is filed	:	VII RULE 11 (a) & (d) R/ W SEC.151 of CPC
Relief Sought for	:	To rejected the plaint on the ground of no cause of action and barred by law.
The date on which the application is filed:	:	13.10.2023
Number of the application:	:	-
The date on which the objections are filed by different opponents:	:	NIL

The date on which the orders were passed on the said application:	:	24.07.2024

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ORDER ON APPLICATION FILED UNDER ORDER VII RULE 11 (a) & (d) OF CPC

This application has been filed by the 2nd defendant seeking to reject the plaint on the ground of no cause of action and barred by law.

2. The application is accompanied with affidavit of defendant No.2, wherein he contended that the plaintiff has filed the suit which is frivolous and vexatious not maintainable under law. Hence liable to be dismissed. The plaintiff seeking relief of recovery of money of Rs.87,356/- with interest @ 24% p.a. The plaintiff being one of the reputed dealers and authorized to manages, authorized Service Center in Bengaluru for many reputable automobile brands. One Mr.Rajeev employee of plaintiff entity informed the defendant No.2 that plaintiff company were contracting small jobs such as painting, fabrication work and other such works and asked the defendant if he was interested to do the work. The defendant No.2 accepted the offer from the plaintiff entity and carried out the work with the plaintiff to carry out the painting job and subsequently worked with other entities belonging to the plaintiff. The plaintiff has paid a sum of Rs.5,05,622/- including sum of Rs.77,129/- as per the invoice No.07/2022 and Rs.67,048/- including GST amount Rs.10,228/- as per the

Invoice No.8/20222 dated 26.03.2022. It is further contention of the 2nd defendant that the plaintiff is wrong in filing a money recovery suit for the recovery of GST amount collected by defendant as part of the invoiced amount and plaintiff is not legally entitled to recover from the defendant No2, which is barred U/Sec.76 of Central Goods & Services Tax Act of 2017 and Karnataka Goods & Services Tax Act 2017. It is further contended and reiterated the Sec.76 and 54 of the Central Goods & Services Tax Act. It is further specifically contended that as per Sec.163 of Central Goods & Services Tax Act there is a bar on jurisdiction of Civil Courts. As such there is a bar to the Civil Court in the above Act to file suit for recovery of GST amount and even there is no cause of action to file the suit. Hence, he sought for rejecting the plaint by allowing the application on the ground of 'no cause of action' and 'barred by law'.

3. Inspite of sufficient opportunity the plaintiff has failed to file a objection. Hence objection by plaintiff side taken as not filed.

4. I have heard counsel for defendant No.2 and perused the materials available on record.

5. Now the points that arise for my consideration are as under:

1) Whether the defendant No.2 has made out grounds to allow IA No.1 and reject the plaint?

2) What Order?

6. My answer to the above points for my consideration are as under:

Point No.1 - **Negative**

Point No.2 -As per the final order; for the following:

REASONS

7. Point No.1: The record shows that it is a suit filed by the plaintiff against the defendants for recovery of money of Rs.87,356/- with interest @ 24% p.a. It is the case of the plaintiff that the defendant Proprietorship firm had agreed to entrust the painting and other small contract jobs to be executed in all its(plaintiff) group branches at Bengaluru. The defendants accepted the work and assured that they will complete the work within time. Accordingly, plaintiff has paid an amount of Rs.5,05,622/- including GST amount of Rs.77,129/- as per Invoice No.007/2022 dated 26.03.2022 and Rs.67,048/- including GST amount of Rs.10,228/- as per Invoice No.08/2022 dated 26.03.2022. The plaintiff noticed that defendants have not paid the GST amount to the Govt. Hence plaintiff constrained to file a suit for recovery of GST amount of Rs.87,356/-.

8. I have perused all the materials available on record with cautiously. As stated above after appearance 2nd defendant has come up with application U/o VII R 11 (a) & (b) CPC to reject the plaint on the ground of no cause of action and suit is barred by law. The defendant No.2 mainly alleging that as per Sec.163 of Central Goods & Services Tax Act, 2017., there is a bar to the Civil Court to recover the GST amount and plaint requires to be rejected as barred by law. It is settled law and in catena of judgments of Hon'ble Supreme Court and in Hon'ble High Courts held that–while dealing with application U/o VII Rule 11 CPC the Court has to look into only the pleadings of the plaint not the plea/written statement of the defendant. Therefore, by keeping these principles let me discuss is there any barred by law in filing the present suit by the plaintiff.

9. As already stated above, it is a simple suit for recovery of money. The plaintiff categorically contended that as per agreement between himself and defendant he had paid an amount of Rs.5,05,622/- with GST amount of Rs.77,129/- and Rs.67,048/- with GST amount of Rs.10,228/- to do the painting work and other work in its all the branches. The plaintiff noticed that the defendant has not deposited the GST amount to the Govt. Hence he is claiming to return the GST amount by way of suit. Now it is clear that it is a dispute between two private persons to recover the amount with regard to transaction taken place in between them. The simple suit for recovery of money is always maintain before this court subject to pecuniary jurisdiction. The defendant herein alleging that GST amount cannot be claimed by way of suit which is barred under section 163 of Central Goods & Services Tax Act. The learned counsel for 2nd defendant while arguing the

matter draw the attention of the court about section 117, 118 and 163 of said Act, which reads as under:

<u>117. Appeal to High Court</u>.-(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which–

(a) has not been determined by the State Bench or Area Benches; or

(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

118. Appeal to Supreme Court.-(1) An appeal shall lie to the Supreme Court-

(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of

the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

<u>162. Bar on jurisdiction of civil courts</u>.-Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

10. In Karnataka Goods & Services Tax Act, 2017 there is a similar section corresponding to Sec.117 & 118 but the Sec.162 is the corresponding Section to the Sec.163 of Central Goods & Services Tax Act, 2017. As noted above the Sec.162 in Karnataka Goods & Services Tax Act, 2017 and Sec.163 of Central Goods & Services Tax Act, 2017 stating no Civil Court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purport to be done under this act. It appears that if Officer done anything in the said act it shall be appealable to the Hon'ble Hon'ble High Court of Karnataka and Order of the Hon'ble High Court of Karnataka, appeal lies before Hon'ble Supreme Court of India. Therefore, the Sec.162 or 163 as aforesaid only bars the suit in respect to act which is done and purporting to be done by the officer in the Act as contemplated U/sec 117 and 118 of the said Act.

11. However, in this case, it is a dispute between two private persons, the plaintiff alleging that he has paid the GST amount which has not been paid by the defendant to the Govt. Therefore he is claiming the said amount as recovery of money suit. As per pleadings whether plaintiff has paid the amount or not is a matter of trial. While disposing application U/o VII Rule 11 court has to consider only pleadings of plaint. It is prima facie shows that it is a suit for recovery of money with regard to transaction held between plaintiff and defendant. Under such circumstances, Sec 163 of Central Goods & Services Tax Act 2017 or Sec. 162 of Karnataka Goods & Services Tax Act, 2017 is not applicable to present case on hand. The present suit between two private persons. Hence it prima facie shows that there is a cause of action to file the suit and suit is not barred by any law. There are no sufficient grounds to reject the plaint as alleged by the 2nd defendant. With this discussion and observation and in that view of the matter the application filed by 2nd defendant is devoid of merits and which is liable to be rejected. Accordingly, I answer Point No.1 in the **Negative.**

12. **Point No.2**: In view my answer to Point No.1, I proceed to pass the following:

ORDER

The application filed by the defendant Under Order VII Rule 11 (a) & (d) of CPC is hereby rejected.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced by me in the open Court on this the **24th day of July, 2024**).

(Shambhulingayya Mudimath)
Judge & ACJM,
Court of Small Causes,
Bengaluru.