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O.S.A(CAD)No.59 of 2024

O.S.A(CAD)No.59 of 2024

and

C.M.P.No.12779 of 2024

in

O.S.A(CAD)No.59 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Read this in conjunction with and in continuation of earlier proceedings made by this Court on 27.06.2024 which reads as follows:

'O.S.A. (CAD) No.59 of 2024

and

***C.M.P. No.12779 of 2024 in O.S.A. (CAD) No.59 of
2024***

M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

***(Order of the Court was made by M.SUNDAR,
J.)***

In the captioned appeal, Mr.S.Haja Mohideen



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Gisthi, learned counsel for the lone appellant is before us.

2. The lone appellant before us is the sole defendant before the Hon'ble Commercial Division in a suit being C.S.(Com.Div.) No. 262 of 2023. The two plaintiffs have been arrayed as two respondents in the captioned appeal.

3. Captioned appeal is directed against an order dated 05.06.2024 made in A.No.2231 of 2024 wherein and whereby Hon'ble Commercial Division has negated an application to set aside an order dated 08.04.2024 setting the sole defendant ex parte. This means the prayer in A.No.2231 of 2024 is under Order IX Rule 7 of 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience and clarity] and not under Order IX Rule 13 CPC.

4. The above takes us to the question of maintainability of captioned appeal in the light of proviso to Section 13(1-A) of 'The Commercial Courts Act, 2015 (Act 4 of 2016)' (hereinafter 'CCA' for the sake of brevity)



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and the judgment of Hon'ble Full Bench in **Surajlal Vs. Pradeep Stainless India Pvt. Ltd., and Ors.**, reported in **AIR 2023 MAD 178 : 2023(2) CTC 257 : (2023 2 MLJ 461.**

5. *Learned counsel for appellant requested for a short accommodation to argue on maintainability.*

6. *Subject to maintainability, the question as to the date on which sole defendant entered appearance i.e., 24.11.2023 would be the reckoning date or should it be the date of service of suit summons will fall for consideration. To be noted, Mr.S.Haja Mohideen Gisthi emphatically submits that suit summons has not been served on the sole defendant until this day.*

7. *In the next listing, Registry shall list captioned matter under the cause list caption 'FOR MAINTAINABILITY'.*

8. *Considering the nature and the number of matters that are coming up, we deem it appropriate to appoint an Amicus Curiae and Mr.Sharath Chandran is appointed as Amicus Curiae to assist the Court in this*



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matter. To be noted, learned counsel for appellant will be heard on 'Maintainability' and Amicus Curiae will be assisting the Court.

9. List as above on 10.07.2024 in the Admission Board i.e., Motion List.'

2. Today, Mr.S.Haja Mohideen Gisthi, learned counsel on record for appellant and Mr.Sharath Chandran, learned Amicus appointed by this Court in and by an order dated 27.06.2024 are before this Court.

3. Adverting to 27.06.2024 proceedings, Mr.Sharath Chandran, learned counsel commenced submissions to assist the Court in resolving what we find to have the trappings of a conundrum.

4. For continuation, list under the sub-caption 'PART-HEARD' on Tuesday.

List on 20.08.2024.



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[M.S., J]

[K.G.T., J]

14.08.2024

mk

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

mk

O.S.A(CAD)No.59 of 2024

and

C.M.P.No.12779 of 2024

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14.08.2024