

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.102/2024

Caveat Petition No.04/2024

I.A. No.01/2024 in CRP No.102/2024

M/s. Ratnagiri Impex Pvt. Ltd., A company registered under the Provisions of the Companies Act, 1956, having its registered office at "Annapurna House", 1/1G, Seventh Cross, Guddadahalli, Mysuru Road, Bengaluru-560026, represented by its Director Shri Chandra Mohan S.A.

..... Defendant-Petitioner(s).

V E R S U S

1. Shri Joydeep Roy Barman, Son of Shri Samir Ranjan Barman, Carrying on the business as a sole Proprietor under the name and style of "M/s. J. Deep Chemicals & Fertilizers", No.38, Akhaura Road, P.O.-Agartala, District-West Tripura.

.....Plaintiff-Respondent(s).

2. Shri Dipam Bohra alias Dipam Jyoti Bhora, carrying on the business under the name and style of M/S. Aditya Oil Engines, as a sole proprietor thereof having its office at Plot 4A, Neel Kamal Apartments, near SBI, Kahilipara Road, Guwahati-781006.

3. Shri Mohan S. Adiram, Assistant General Manager, Sales and Marketing, "Ratna Giri Impex Ltd. having its registered office at "Annapurna House", 1/1G, Seventh Cross, Guddadahalli, Mysuru Road, Bengaluru-560026.

4. Shri Arun S.C. Director, Ratna Giri Impex Pvt. Ltd. having its registered office at "Annapurna House", 1/1G, Seventh Cross, Guddadahalli, Mysuru Road, Bengaluru-560026.

5. Shri Pravin Baruah, carrying on business under the name and style of "PS Enterprise", having its office at 4-A, Neel Kamal Apartments, near SBI, Kahilipara Road, Guwahati-781006.

.....Proforma-Respondent(s).

For Petitioner(s) : Mr. T.K. Deb, Advocate.

For Respondent(s) : Mr. Apratim Bhattacharya, Advocate,
Ms. Mampi Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

22/11/2024

Heard Mr. T.K. Deb, learned counsel appearing for the petitioner and Mr. Apratim Bhattacharya, learned counsel appearing on behalf of the

plaintiff/respondent No.1 herein who is also the caveator in Caveat Petition No.04 of 2024.

Since learned counsel Mr. Apratim Bhattacharya appears on behalf of the caveator, the Caveat Petition No.04 of 2024 stands discharged.

2. The instant revision petition is directed against the order dated 09.09.2024 passed by the learned Judge, District Commercial Court, West Tripura, Agartala in Commercial Suit No.01 of 2019 preferred under Article 227 of the Constitution of India and also invoking Section 115 of the Code of Civil Procedure, 1908 (CPC, for short). However, learned counsel for the petitioner at the outset seeks to delete the provisions relating to Section 115 of the CPC in the cause title and seeks to press the instant revision petition under Article 227 of the Constitution of India. Permission is allowed. Let such deletion be made by the learned counsel for the petitioner in the cause title during course of the day in red ink.

3. The petitioner is the defendant No.1 in Commercial Suit No.01 of 2019 which was converted as a Commercial Suit from Money Suit No.27 of 2014 as the subject matter of the suit came to fall under the jurisdiction of the Commercial Court in terms of the Commercial Court Act, 2015. Before the suit was converted as a Commercial Suit by order dated 21.11.2015, the defendant Nos.2, 3 and 5 were debarred from filing written statement. Defendant No.1/ petitioner herein and defendant No.4 in the money suit were aggrieved by striking of the defence by the same order dated 21.11.2015 passed by the learned trial Court. As the defence of defendant Nos.1 and 4 were struck off, it was directed that the written statement of defendant Nos.1 and 4 will not be on

record and the plaintiff will have to prove his case in accordance with law and for that purpose, the defendant No.1 and 4 shall have a right to examine and cross-examine the witnesses of the plaintiff and take part in the trial and also the argument. The order dated 21.11.2015 (Annexure-3) was challenged by the defendant No.1 and 4 both before this Court in CRP No.69 of 2016. However, this Court declined to interfere in the order dated 21.11.2015.

4. Evidently, the order of striking of the defence of defendant No.1 thereafter went to the Apex Court in Special Leave to Appeal (C) No.5595 of 2019 which was dismissed by order dated 01.03.2019. SLP(C) No.5501 of 2019 which was directed against the judgment and order dated 06.07.2018 passed by this Court in CRP No.90 of 2017 whereby the petitioner's (Ratnagiri Impex Pvt. Ltd.) petition against the rejection of its application under Order VIII Rule 1 CPC for filing written statement was dismissed. The Apex Court, however, keeping in view the interest of the parties and to adjudicate the matter on merits directed the trial Court to accept the written statement filed by the petitioner. The respondents were also permitted to file additional affidavit, if they are required to do so. The Apex Court also directed the trial Court to dispose of the suit pending before it in accordance with law as expeditiously as possible after hearing learned counsel for the parties.

The extract of the judgment dated 01.03.2019 passed in both the SLPs is quoted hereunder:

"SLP(C)No.5595/2019:

Having heard learned counsel for the petitioner, we do not find any ground to interfere with the impugned order passed by the High Court.
The special leave petition is accordingly dismissed.

SLP(C) No.5501/2019:

This petition is directed against judgment and order dated 06.07.2018 passed by the Agartala High Court, Tripura in CRP No.90/2017 whereby the petitioner's petition, against the rejection by the trial court of its application under Order VIII Rule 1 CPC for filing written statement was dismissed. The petitioner's written statement was not accepted by the trial court due to the delay in filing of the same.

Having heard the learned counsel for the petitioner as well as the respondents and carefully scrutinizing the record, we note that there is a delay in filing the written statement by the petitioner before the trial court. However, keeping in view the interest of the parties and to adjudicate the matter on merits, we direct the trial court to accept the written statement filed by the petitioner. The respondents are also permitted to file additional affidavit, if they are required to do so.

Keeping in view the facts and circumstances of the present case, we direct the trial court to dispose of the suit pending before it in accordance with law as expeditiously as possible after hearing learned counsel for the parties.

The special leave petition stands disposed of accordingly."

5. The Commercial Suit is still pending and at the stage of evidence of plaintiff witness No.1 as informed by learned counsel for both the parties. The aforesaid limited background is necessary to deal with the present controversy. Bereft of unnecessary details, as it appears from the relevant pleadings placed from record and submission of learned counsel for the parties that defendant No.1 got a knowledge that defendant No.3 has died sometime on 05.09.2022. Thereafter, defendant No.1 was directed by the learned trial Court to provide information regarding the death of defendant No.3. Later, since such information was not provided by defendant No.1, plaintiff filed an application for issuing summons upon defendant No.3. Thereafter, on the application of the plaintiff, summons issued upon defendant No.3 remained unserved. The present impugned order dated 09.09.2024 was filed by the plaintiff for recalling the order dated 29.11.2023 and the subsequent orders dated 12.02.2024, 16.04.2024, 26.04.2024, 18.05.2024, 26.06.2024, 03.07.2024, 25.07.2024 and 06.08.2024 on the plea that the instant suit was earlier running at the stage of cross-examination of the plaintiff and *ex parte* against the defendant Nos.2, 3 and 5 as per order dated 21.11.2015 passed in M.S. No.27 of 2014.

6. It is evident from perusal of the impugned order that on 16.09.2023 the defendant No.1 had filed a petition regarding the factum of death of defendant No.3 and sought for adjournment for producing documents of the fact relating to death of defendant No.3 which was allowed. When defendant No.1 failed to produce the same, the plaintiff filed a petition inviting the Court's attention to the order of the Apex Court in SLP(C) No.5501 of 2019, quoted above, wherein the Apex Court had issued a specific direction on the learned Court below to dispose of the instant suit in accordance with law as expeditiously as possible. The learned trial Court upon filing of the petition proceeded to recall the order dated 29.11.2023 and the subsequent orders as in the opinion of the Court there was no further scope to procure the attendance of the defendant No.3 once the suit was ordered to be proceeded *ex parte* against the defendant Nos.2, 3 & 5.

7. The relevant part of the impugned order is extracted hereunder:

"Perused the case record.

It appears from the case record that ex-parte order has been passed against the defendant No.2, 3 & 5 as per order dated 21-11-2015 and there is no scope to trace out the address of defendant No.3 and also the defendant No.1 who is the best person to produce the present address of the defendant No.3 as he was once employee of the defendant No.3. But defendant No.1 filed a petition as reflected in the order dated 26-04-2024 for exemption from filing the address of the defendant No.3 and the death certificate of defendant No.3.

In view of above fact and circumstances the Court of the opinion that since there is no any further scope to procure the attendance of the defendant No.3 and once it has been ordered as an ex-parte against defendant No.2, 3 & 5. Hence, it shall not be justified to proceed with the order dated 29-11-2023 for summoning upon the defendant No.3, with this observation the order dated 29-11-2023 is hereby recalled and the case may be fixed to its earlier stage.

And, it is needless to recall the subsequent orders as prayed for since the order dated 29-11-2023 itself constructively made the rest orders.

Plaintiff is directed to remain present on the next and to produce his witness for cross-examination.

Fix 30-11-2024 for cross-examination of PWs."

This order has aggrieved the defendant No.1, i.e. the petitioner herein to approach this Court under Article 227 of the Constitution of India on the ground that these orders were recalled on the same day without giving any opportunity to the defendant No.1, petitioner herein, for filing written objection.

8. Learned counsel for the petitioner submits that the learned Commercial Court has committed serious error in opining that there is no further scope to procure the attendance of the defendant No.3 once the case has proceeded *ex parte* against the defendant Nos.2, 3 & 5. The learned Court ought to have held that summons upon defendant No.3 could have been served through paper publication or by any other means which procedure is prescribed under the CPC. Moreover, defendant No.1, petitioner herein, cannot be held liable in any way for returning the summons un-served as the last known address was furnished by the defendants as per order of the learned Court at the instance of the petition filed by the plaintiff/respondent. In the wake of the exercise undertaken after the order dated 29.11.2023, it would not be proper to proceed against the defendant No.3 *ex parte* without impleading his legal heirs as it could occasion multiplicity of proceedings. That defendant No.3 had left the job since long and the whereabouts of his legal representatives are not known to the defendant No.1, petitioner herein. Therefore, the impugned order dated 09.09.2024 is not sustainable in law.

Learned counsel for the petitioner further submits that defendant No.3 had executed certain documents which are vital for determining the issues in controversy.

9. Mr. Apratim Bhattacharya, learned counsel for the plaintiff/respondent No.1, submits that inadvertently on a statement made by defendant No.1 that defendant No.3 had died sometime on 05.09.2022, the exercise for ascertaining his address for service of summons upon him were initiated at the instance of the plaintiff which was wholly unnecessary and uncalled for since the suit had proceeded *ex parte* as against the defendant No.3 since 21.11.2015 which order had attained finality. It is only the defendant No.1/petitioner herein who succeeded before the Apex Court whereafter his written statement was taken on record by the learned trial Court as per order dated 01.03.2019. There is no reason why defendant No.1/ petitioner herein should agitate against the impugned order which has recalled the orders relating to ascertainment of the address of the defendant No.3 reportedly deceased on 05.09.2022 and for service of summons upon him. The consequences of failure to substitute defendant No.3 would befall the plaintiff/ respondent No.1 herein only. Defendant No.1 has enough *locus* to contest the suit on the basis of his own written statement and evidence or cross examination of the plaintiff witnesses. Therefore, this Court may not consider it necessary to interfere in the impugned order as no fruitful result would entail as the impugned order was passed on the application filed on erroneous advice by the plaintiff and also failure on the part of the defendant No.1 to give the detailed address of the defendant No.3 said to be deceased on 05.09.2022. Since the Apex Court has issued a specific direction upon the learned trial Court on 01.03.2019 to dispose of the suit in accordance with law as expeditiously as possible, it would be proper that the adjudication of the pending Commercial Suit be concluded as expeditiously as possible.

10. I have considered the submissions of learned counsel for the parties and taken note of the relevant facts necessary for determination of the present issue.

11. The present petition has been preferred under Article 227 of the Constitution of India. This Court in exercise of the powers under Article 227 of the Constitution of India is required to see whether the learned trial Court is proceeding within the bounds of its jurisdiction or has committed an error of jurisdiction or has exceeded jurisdiction during course of the proceedings. In view of the narration of the relevant facts noted above, it would be but obvious that if the suit had proceeded *ex parte* against the defendant No.3 as back as 21.11.2015 apart from defendant Nos.2 and 5 and that the said order has attained finality, the consequences on the death of the defendant No.3 would befall the plaintiff who is respondent No.1 herein.

12. The plaintiff would be required to establish his cause of action to seek the relief against the surviving defendants in case defendant No.3 has died and remains unsubstituted at the risk of the plaintiff. Defendant No.1/ petitioner herein has no reason to complain if the plaintiff fails to take steps for substitution of defendant No.3 in the suit. Therefore, this Court feels that the entire exercise undertaken since about last one year from the passing of the order dated 29.11.2023 on statement of defendant No.1 that defendant No.3 has died on 05.09.2022 was wholly uncalled for. This has unnecessarily delayed the trial of the Commercial Suit inspite of clear directions of the Apex Court as far back as 01.03.2019 to dispose of the suit in accordance with law as expeditiously as possible after hearing learned counsel for the parties.

13. In these circumstances, this Court is of the considered view that interference in the matter under Article 227 of the Constitution of India is not required. The instant revision petition is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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