

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P(NPD)No.4069 of 2012
and
M.P.No.1 of 2012

1.M/s.VRL Logistics Limited,
Coimbatore Branch Office,
Having office at No.1/3, Dharshana Complex,
Chetty Street, Ashok Nagar,
Coimbatore – 641 001.

2.M/s.VRL Logistics Limited,
Having Registered Administration Office, Hubli,
No. 17th KM Bangalore Road,
Varur, Hubli – 581 207, Karnataka.

.. Petitioners

Vs

M/s.Velumani Engineering Industry,
Represented by its Partner,
Mr.A.V.Karthikeyan
Having their Factory at
Thudiyalur, Coimbatore.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the dismissal of the condone delay application in I.A.No.177 of 2012 in O.S.No.315 of 2009 dated 07.08.2012 passed by the learned II Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.L.Rajasekar

For Respondent : Mr.S.Gunalan

ORDER

This civil revision petition has been filed against the dismissal of the condone delay application in I.A.No.177 of 2012 in O.S.No.315 of 2009 dated 07.08.2012 passed by the learned II Additional Subordinate Judge, Coimbatore.

2.The present petitioners are the defendant in the suit in O.S.No.315 of 2009 on the file of the II Additional Subordinate Judge, Coimbatore.

3.The case of the plaintiff / respondent herein is that the suit was filed for directing the defendants for recovery of amount of Rs.1,26,801/- with future interest of 24% per annum and the Principal amount of Rs.51,201/- from the date of suit till date of payment.

4.The further case of the plaintiff is that the plaintiff having its industry at Thudiyalur, Coimbatore and is manufacturing motors and pumps and the 1st defendant is the transport company and the 2nd defendant is the Registered Administrative office of the 1st defendant at Hubli. On 08.04.2007 the respondent / plaintiff had booked the following two

consignments through 1st defendant Transport to be delivered at Gokak in favour of Mutteshwar Electricals vide LR.No.31804561X2: dated 18.04.2007.

1. Monoblock pump set TMH 1, 3HP, 2½" X 2" S.No.4225/07
2. Monoblock pump set TMH 6, 10HP, 3" X 2½" S.No.4228/07

The total cost of the above said two consignments are Rs.25,994/-.

5.Further the case of the plaintiff is that the plaintiff again on 08.05.2007 has sent the following consignments vide L.R.No.20154040X2: dated 08.05.2007.

1. Monoblock pump set TMH 10, 10HP, 2½" X 2" S.No.4229/07
2. 4" Agricultural Submersible pump set (motor and pump) S.No.4S 670/07 model-2 HP/1.5.KW, MOTOR TYPE EM 20, PUMP TYPE EM 2/18.

The total cost of the above said consignments are Rs.25,207/-.

6.The plaintiff also further states that as per the terms and conditions the defendants will have to deliver the said consignments to M/s.Mutteshwar Electricals at Gokak on receiving the Original L.R. Copy. But, the plaintiff comes to understand that the 1st defendant have delivered the said goods without receiving the Original L.R. Copy because documents were sent through Bank as per the earlier letter dated 24.02.2007. Therefore, the action of the defendants in delivering the said consignments

to the said M/s.Muttेशwar Electricals without receiving the L.R. Copy is high handed and illegal. Therefore, on 2nd time, the defendants were re-booked the original consignments with L.R. Copy. Hence, the total worth of the goods that were sent by plaintiff is Rs.51,201/- and the defendants are liable to pay the said amount with interest at the rate of 24% per annum from 30.04.2007. Accordingly, the petitioner has filed the suit for recovery of the amount of Rs.1,26,801/- with future interest of 24% per annum and the Principal amount of Rs.51,201/-.

7.The case of the defendants is that he denied the entire allegations and as per the terms and conditions of defendant's course of business both the consignments have been delivered to the consignee on 24.04.2007 and 15.05.2007 respectively duly taking acknowledgments on the deliver's copies of the way bills after collecting necessary freight charges from the consignee. Therefore, the suit itself is not maintainable and the defendant have no liability to pay the said amount.

8.The suit was posted on 22.10.2010 for filing written statement on behalf of the defendants, but they were not filed the written statement in the said date and hence on the same day an exparte order was passed against the defendants and latter on the exparte decree was passed in favour of the plaintiff. Therefore, the petitioners / defendants have filed

I.A.No.177 of 2012 along with the set aside the exparte decree dated 25.11.2011 for condoning the delay of 360 days in filing the petition.

9.The respondents have filed their counter stating that originally the case was posted on 22.10.2010 for filing written statement. No written statement was filed. Hence, the suit was decreed in favour of the respondent / plaintiff and the delay for 360 days was not properly explained by the petitioners / defendants and they also ought to have explained each and every day delay in filing the above set aside application. The respondent / plaintiff also states that the petitioners / defendants have not stated any valid reasons and the petition lacks merits and the same is liable to be dismissed in limini. The respondent / plaintiff has sought for dismissal of the above application filed in I.A.No.177 of 2011. Considering both side arguments, the learned Judge has dismissed the application with cost on the ground that the petitioners must be given sufficient cause and there must not be any negligent or inaction or want of bonafide intention on the part of the petitioners. But in this case, the petitioners stated that the mixing of case bundle with other records is least convincing and it is for the counsel to initiate the proceedings by obtaining certified copies. Having known about the passing of exparte decree the petitioners could have taken steps immediately after the receipt of notice in execution proceedings. The learned Judge also states that the reason for the dismissal that even after

entering appearance in execution proceedings, no step has been taken by the petitioners for considerable period of time. Therefore, it is incumbent on the part of the petitioner to diligently pursue the matter to set aside the exparte decree. The proof of sufficient cause is not shown nothing has to be done except to dismiss the application. Accordingly, this application lacks bonafide and the learned Judge has dismissed application with cost.

10.Heard Mr.L.Rajasekar, learned counsel appearing for the petitioners and Mr.S.Gunalan, learned counsel appearing for the respondent filing change of vakalath for Mr.D.Muthuselvam, since he is not practicing in this Court. I have also gone through the entire records along with the connected documents.

11.When the matter came up for admission on 26.11.2012, this Court while ordering notice, granted an order of interim stay for operation of the order.

12.Admittedly, the suit was filed by the respondent / plaintiff for recovery of amount of Rs.1,26,801/- that too the petitioners / defendants has not properly delivering the consignments to one M/s.Muttेशwar Electricals at Gokak. Therefore, the plaintiff caused loss for a sum of Rs.51,201/-. Therefore, as per the terms and conditions, they filed the suit

for recovery of the said amount with interest. It is not a money lending case or pronote case. It is a case of non deliverance of the consignments by the defendants in a proper manner and the plaintiffs stated that for that reason they have loss and they should have a right to recover the compensation at Rs.51,201/- unless the matter is decided on merits, the real truth in the case should not be come out. Therefore, the very filing of the petition though the petitioners / defendants has not given any valid reason, but in the interest of justice, the same should be considered. The learned counsel appearing for the respondent / plaintiff vehemently opposed for allowing the above civil revision petition, since the respondent / plaintiff states that the petitioners / defendants has not given any valid reason and the delay of 360 days is more than one year and the petitioners / defendants should given sufficient cause and they have give reason for each and every day delay. But, they have failed to give the same. Hence, the respondent has prayed this Court for dismissal of the civil revision petition.

13.Considering both side arguments, I am inclined to allow the civil revision petition by condoning the delay of 360 days in filing the set aside application in the interest of justice and the petitioners should compensate the delay and non appearance before the trial Court to the respondent / plaintiff by way of cost.

14. Accordingly, I am inclined to pass the following orders:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.177 of 2012 in O.S.No.315 of 2009 dated 07.08.2012, on the file of the 2nd Additional Subordinate Judge, Coimabtores, on condition that the petitioners should pay a sum of Rs.2,500/- to the respondent's counsel within a period of two weeks from the date of receipt of a copy of this order.

(b) the trial Court is directed to pass orders on the set aside application within a period of one month from the date of receipt of a copy of this order by giving notice to both the parties.

(c) the trial Court is further directed on passing the order in the set aside application, to dispose of the suit within a period of three months thereafter. Both the parties are hereby directed to give their fullest co-operation for early disposal of the set aside application as well as the suit in O.S.No.315 of 2009.

15. Therefore, the civil revision petition is allowed with cost. Consequently, connected miscellaneous petition is closed.

09.08.2016

VS

Note: Issue order copy on 02.11.2016.

Index: Yes/No.

Internet: Yes/No.

To

The II Additional Subordinate Judge,
Coimbatore.

M.V.MURALIDARAN, J.

VS

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