

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.8.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.Nos.83 and 127 of 2017

M/s.Integrated Finance Company Ltd.,
Rep. By Mrs. Hema Jothi,
its authorised representative
Having office at No.10, R block, 2nd floor,
Prem Nagar Colony, South Boag Road,
T.Nagar, Chennai-600 017. .. Petitioner in both CrIrcs.

Vs.

Priya .. Respondent in Crl.R.C.No.83 of 2017
Sherifa Beevi .. Respondent in Crl.R.C.No.127 of 2017

Prayer in Crl.R.C.No.83 of 2017: Petition filed under Section 397 and 401 of Cr.P.C to call for the records in Crl.M.P.No.11075 of 2015 pending on the file of the Principal Sessions Judge, Chennai and set aside the order dated 12.09.2016 of dismissal and allow this criminal revision.

Prayer in Crl.R.C.No.127 of 2017:Petition filed under Section 397 and 401 of Cr.P.C to call for the records in Crl.M.P.No.16113 of 2015 dated 12.09.2016 in Crl.R.C.S.R.No.17516 of 2015 in Crl.M.P.No.1338 of 2010 passed by the Principal Sessions Judge, Chennai and set aside the order dated 12.09.2016 of dismissal and allow this criminal revision.

For Petitioner : Mr.K.P.Ananthakrishna

For Respondents : Ms.Shase

COMMON ORDER

These two criminal revision cases have been filed against the order passed by the learned Principal Sessions Judge, Chennai by order dated 12.09.2016 made in Crl.M.P.Nos.11075 & 16113 of 2015 against Crl.R.C.SR.Nos.11766 & 17516 of 2015 in Crl.M.P.Nos.700 & 1338 of 2010 respectively.

2. The short facts leading to file these revision cases are as follows:

(i) The petitioner is a complainant in proceedings filed under Section 138 of Negotiable Instrument Act against the respondent.

(ii) As far as Crl.R.C.No.83 of 2017, the complaint was filed on 21.6.2010 before the trial Court i.e., XVII MM, Saidapet, Chennai-15. Since there was a delay of 294 days in filing the said complaint, the petitioner had also filed a petition before the said Magistrate Court to condone the said delay of 294 days. The said petition was dismissed by the trial Court on 20.12.2013 for non representation and for failure to take steps to serve notice to the respondent. Aggrieved over the

said order of dismissal made by the trial Court, the petitioner had filed a revision before the Appellate Court i.e., Principal Sessions Judge at Chennai in Crl.R.C.S.R.No.11766 of 2015. Since the said revision was not filed in time and it was filed after a long delay of 459 days, the petitioner had also filed the present MP, i.e., Crl.M.P.No.11075 of 2015 to condone the said delay of 459 days in filing the revision before the first Appellate Court.

(iii) In respect of the second case, a complaint was filed on 06.07.2010 with a delay of 334 days. Hence, a condone delay petition was filed. The said petition was dismissed on 20.12.2013 for the very same reason for non representation and for failure to take steps to serve notice to the respondent. Against the said order, the connected revision has been filed before the Appellate Court with a delay of 452 days and the petitioner had also filed Crl.M.P.No.16113 of 2015 to condone the delay of 452 days in filing the revision before the first Appellate Court.

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(iv) Both the condone delay petitions were dismissed on merits by order dated 12.09.2016 by the Principal Sessions Judge, Chennai. Against which the present revisions have been filed.

3. I have heard Mr.K.P.Ananthakrishna, the learned counsel appearing for the petitioner as well as Ms.Shase, the learned counsel appearing on behalf of the respondents in both the revision cases.

4. The learned counsel appearing for the petitioner would submit that the petitioner company had entered into financial trouble in or about the year 2009-10 with the result, the general running of the company came to a grinding halt as number of litigations including winding up applications have been filed against the petitioner company. In the said circumstances, this Court had appointed an Administrator by order dated 27.8.2013.

5. When he was in office looking after the affairs of the petitioner's company, the said orders of dismissal were passed by the trial Court on 20.12.2013. Therefore, immediate attention could not be given by the company to all the litigations including the dismissal of the condone delay petitions made by the trial Court, as the Administrator was busy in disbursing the amount to the creditors. After sometime, since the Administrator himself resigned, the company could not move further to look into all these legal issues, especially,

the litigations filed by or against the company and with the result, though the orders of dismissal was made on 20.12.2013 itself, the petitioner was not able to present the revision cases before the first Appellate Court in time and that is the reason huge delay had occurred on the part of the petitioner to move the revisions.

6. Per contra, Ms. Shase, the learned counsel appearing for the respondents would state that merely because the company had been under the hands of the Administrator appointed by this Court, it cannot be said that no one was there to look after the company's affairs and for the said reason, the petitioner cannot plead that the delay that too to the extent of 459 days in preferring Crl.R.C.SR.No.11766/2015 and 452 days in preferring Crl.R.C.SR.No. 17516/2015 respectively before the first Appellate Court to be condoned.

7. The learned counsel would also submit that even the complaints originally were filed with almost huge delays similar to that of the delay occurred in filing the complaints i.e., 294 days (Crl.R.C.No.83/17) and 334 days (Crl.R.C.No.127/17) respectively and even the said condone delay petitions had not been properly persuaded by the petitioner and in fact for non representation on the

part of the petitioner and also failure on his part even to take steps to serve notice to the respondent, the said petitions were dismissed by the trial Court.

8. Therefore, even after getting such an order of dismissal, no action had been taken on the side of the petitioner and after a lapse of more than a year, revisions were filed with the said huge delays of 459 days in preferring Crl.R.C.SR.No.11766/2015 and 452 days in preferring Crl.R.C.SR.No. 17516/2015 respectively for which absolutely no acceptable reasons had been given by the petitioner.

9. The learned counsel submits that these aspects have been considered by the first Appellate court in a proper perspective and ultimately, has rejected the petitions under the impugned orders. Hence, the learned counsel submits that there is no illegality or impropriety attached with the said order.

10. I have considered the rival submissions made by the learned counsel appearing for both sides and also the materials placed before this Court for perusal.

11. Even according to the learned counsel for the petitioner this Court had appointed a senior IAS officer as Administrator by order dated 27.8.2013. Immediately, he has taken charge of the company's affairs as an Administrator and during his tenure only, the said petitions for condoning the delay of 294 days (Crl.R.C.No.83/17) and 334 days (Crl.R.C.No.127/17) respectively in filing the complaint were dismissed by the trial Court on 20.12.2013.

12. It is also the case of the petitioner that the Administrator was concentrating on disbursing money to be given to the creditors and therefore, he could not concentrate on these legal matters which are pending by or against the petitioner company.

13. Once, the Administrator has been appointed to a company to administer the company as an interim measure, it is the Administrator, who has to look into all the affairs of the company. Since the Administrator has concentrated only on disbursing the amounts to the creditors and therefore, he could not devote his time and manage other affairs including legal issues and litigations against the company, cannot be an acceptable reason. Moreover, the said Administrator had been in office till 20.11.2014. Therefore, during

the period i.e., between 27.8.2013 and 20.11.2014, the entire Administration of the company was at the hands of the Administrator and so, he, at his command, can employ or engage anyone to look after the day to day affairs of the company and due importance should have been given for the litigations filed or pending by or against the company.

14. If these kind of excuses, as has been projected by the petitioner herein for such huge delays is accepted, then it would set a wrong precedent that a person, who is staying in a managerial capacity of a company could only look after the important business from the view point of such managerial person alone and no other issues concerned with the company. That kind of reason / proposition can never be considered to be a plausible reason for such a lackadaisical attitude on the part of the petitioner.

15. All these aspects have been thoroughly discussed and considered by the learned Judge in the order impugned and the learned Judge has given reasons for not accepting the case of the petitioner.

16. Since the petitioner company is already facing financial crisis and that is the reason, the Administrator also had concentrated on important issues, from the view point of the management of the company and they knowingly omitted to give attention to these issues like the one where the present case has been kept in cold storage for more than one year, even without taking any steps to file appropriate revisions before the Appellate Court. This lacuna on the part of the petitioner or its management cannot be accepted for the reasons adduced by the petitioner and therefore, the conclusion arrived at by the learned Judge in the impugned order, in the opinion of this Court, is absolutely in order and therefore, there is no irregularity or impropriety in the said order.

17. In view of the aforesaid facts and circumstances as well as the discussions made, this Court has no hesitation to hold that the order impugned is very well sustained and in the result, this revision fails and accordingly, the same is dismissed.

18. As per the order of this Court, Ms.Shase, learned counsel was appointed as a legal aid counsel to represent the respondents in both the cases. Accordingly, she appeared before this Court and

argued the cases on behalf of the respondents. Since the learned counsel had been appointed as legal aid counsel by order of this Court, she has appeared and has taken all efforts and after having thoroughly prepared the case, she projected it by taking all possible grounds and defences on behalf of the respondents. This attitude on the part of the learned counsel appearing for the respondents has to be appreciated.

19. The learned counsel since has not been fixed any remuneration by this Court, the Tamil Nadu State Legal Services Authority is directed to fix a reasonable remuneration to the counsel for respondents appearing in these two cases. In this regard, a formal application shall necessarily be given by the learned counsel along with the copy of this order and on receipt of the same, needful be done and the fees to be fixed, has to be paid to her, immediately.

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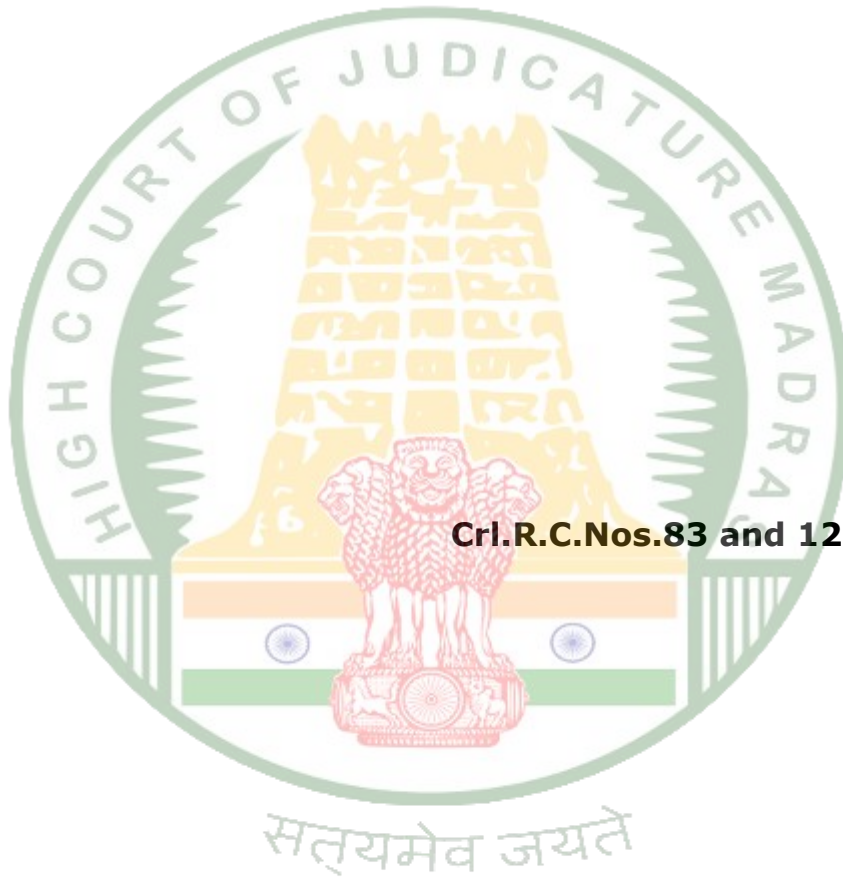
31.8.2017

Index: Yes / No
Internet : Yes / No
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To

The Principal Sessions Judge,
Chennai.

R.SURESH KUMAR,J.
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