

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.4232 of 2017
and C.M.P.No.19840 of 2017

M/s.Senthil Textile Mills Pvt., Ltd.,
Represented by
Managing Director,
V.M.Elangovan,
Son of Marimuthu Mudaliar,
Attur Main Road,
Minnamballi,
Salem - 636 106

..Petitioner

Vs.

M/s.Sri Ram Spinners,
A firm by its partner,
J.Ranganathan,
Son of Govinda Chettiar,
D.No.24/140, 1st Floor,
Pension Line Road,
Gugai, Salem - 6

..Respondent

PRAYER:

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The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the Fair and Decretal order dated 05.07.2017, made in I.A.No.421 of 2016 in O.S.No.35 of 2012, on the file of the Court of the II Additional District Judge at

Salem insofar as it imposes the condition to deposit 50% of the decree amount and allow the same.

For petitioner : Mr.S.Vadivel Murugan

For Respondent : Mr.K.Selvaraj

ORDER

According to the revision petitioner, the respondent firm has filed a suit in OS.No.35 of 2012 for recovery of money against the revision petitioner mill. The revision petitioner after filing written statement in the year 2012, has not appeared before the court below. Therefore, the petitioner mill was set ex-parte and ex-parte decree was passed. After came to know the ex-parte decree, the instant application has been filed by the petitioner to condone the delay of 835 days in filing an application to set aside the ex-parte decree. The trial court passed conditional order directing the petitioner to deposit 50% of the decree amount for allowing the condone delay application. Challenging the same, the present Civil Revision Petition has been filed before this Court.

2. According to the revision petitioner, due to bonafide reason, viz., his father who is aged person looking after the legal

matter of the petitioner mill was not able to appear before the trial court on the hearing date. Counter statement has been filed by the respondent firm stating that there is no valid reason for allowing the said application and further the petitioner has to give valid reason for every day delay. However, no sufficient reason or any materials has been furnished to satisfy the court for condoning the delay. After considering the submissions made by the parties, the court below considering the nature of the suit accepted the reasons sated in the affidavit. However, due to inordinate delay in filing the application, that too without producing any document to substantiate his contention, the court below has allowed the application, on condition that the revision petitioner shall deposit a sum of Rs.50% of the decree amount on or before 03.08.2017. Therefore, the revision petition is liable to be dismissed.

3. According to the learned counsel for the revision petitioner, imposing the onerous condition by the court below by depositing 50% of the decree amount is not sustainable. Hence, the order of the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent firm would submit that the revision petitioner has not explained the

inordinate delay with sufficient reason. However, the court below considering the nature of the suit passed conditional order that the application will be allowed on deposit of 50% of the decree amount. Therefore, there is no warrants to interfere with the orders passed by the court below.

5. The revision petitioner has filed the Civil Revision Petition only in respect of onerous condition imposed by the court below by directing the petitioner to deposit 50% of the decree amount. According to the revision petitioner, revision petitioner's father namely Marimuthu Mudaliyar who was the Chairman of the petitioner mill was suffering from illness. Therefore, he was not able to appear before the court on the hearing date. Thereafter, he filed an application to condone the delay in filing the application to set aside the ex-parte decree. The aforesaid Marimuthu Mudaliar died on 03.08.2017. Therefore, the Civil Revision Petition has been filed by the present Managing Director before this Court. According to the revision petitioner, the Managing Director of the revision petitioner company is authorised by the said company for filing the present Civil Revision Petition. By considering the aforesaid fact and the age of the then Chairman, the said application was allowed by the court below. However, the court below has imposed onerous

condition on the revision petitioner by directing him to deposit 50% of the decree amount. This Court feels that the said condition has to be modified by this Court.

6. In view of the said facts, the learned counsel for the respondent firm would fairly submit that already respondent firm has suffered for the last five years for the litigation, therefore, the inordinate delay can be compensated by imposing heavy cost against the revision petitioner. He further submitted that the revision petitioner shall be directed to cooperate for the disposal of the said suit, within the time frame as may be fixed by this Court. Otherwise, the main case will be dragged on and protracted at the hands of the respondent.

7. In the interest of justice, the conditional order passed by the court below in IA.No.421 of 2016 dated 05.07.2017 in OS No.35 of 2012 is modified as follows:

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- a) The Civil Revision Petition is partly allowed on payment of cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent.
 - b) The revision petitioner is directed to pay Rs.50,000/- (Rupees

Fifty Thousand only) to the respondents herein, failing which the Civil Revision Petition stands dismissed automatically without further reference to the court.

- c) The II Additional District Judge, Salem is directed to dispose of the IA.No.421 of 2016 in OS.No.35 of 2012 within a period of two weeks from the date of receipt of a copy of this Order.
- d) On instructions, both the parties undertake to cooperate for the disposal of the said suit.
- e) The court below is directed to dispose of the suit in OS.No.35 of 2012 within a period of four months from the date of receipt of a copy of this Order.

8. Consequently, the connected miscellaneous petition is closed. No costs.

20.11.2017

Speaking/Non-speaking order

Index :Yes/No

Internet:Yes/No

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To
The II Additional District Judge,
Salem.



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D.KRISHNAKUMAR. J,

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