



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.1921 of 2015 and

MP(MD).No.1 of 2015

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United India Insurance Company Limited,
Division No.XI, No.501-502,
5th Floor, Kailash Building,
No.26, KG Marg, New Delhi - 110 001 : Petitioner/3rd Defendant

Vs.

1.The Food Corporation of India,
rep. by the District Manager,
23-B, beach Road, Thoothukudi-1 : 1st Respondent/Plaintiff

2.M/s. Ramkin Shipping Enterprises,
C/o. Hoibund Ship Management Ltd.,
No.60, Leman street, London E-I-EU,

3.M/s. Diamond Shipping Agencies Limited,
No.163, Victoria Street,
Thoothukudi.

4.M/s. E.D& F Man Sughan Ltd.,
Surger Quarry, Lower Thames Street,
London EC 3 RDU

5. M/s.Mineral and Metal Trading Corporation,
Core-I, Scope Complex No.7,
Lothi Road, New Delhi. : Respondents 2 to 5/
(R2 to R5 given up) Defendants 1,2,4 & 5

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records in I.A.No.181 of 2014 in O.S.No.2 of 2002 dated 13.03.2015 on the file of II Additional District Judge, Thoothukudi and set aside the same.

For Petitioner : Mr.C. Jawahar Ravindran

For respondents : Mr. S. Sethuraman for R1

O R D E R

This Civil Revision Petition is to call for the records in I.A.No.181 of 2014 in O.S.No.2 of 2002 datd 13.03.2015 on the file of II Additional District Judge, Thoothukudi and set aside the same.



2. The petitioner is the third defendant in O.S.No.2 of 2002 on the file of the learned II Additional District Judge, Thoothukudi. The first respondent who is the plaintiff filed the above said suit for recovery of money. An ex-parte decree was passed on 26.09.2005. The petitioner filed I.A.No.181 of 2014 in O.S.No.2 of 2002 to condone the delay of 4269 days in filing an application to set aside the ex parte decree, dated 26.09.2005.

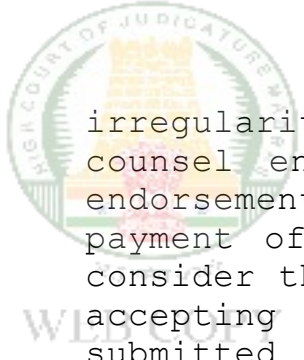
3. According to the petitioner, the suit summons were not served on the petitioner and he came to know about the ex parte decree, only when the notice in the Execution Petition was served. The respondent did not file any counter.

4. The first respondent filed counter affidavit and stated that the petitioner has not given any valid reason for condoning the huge delay of 4269 days in filing an application to set aside the ex parte decree. He further contended that learned counsel for the petitioner has also made an endorsement in the application that the petition may be allowed on payment of cost and decree cost of Rs.88,412/-.

5. The learned Judge considering the materials on record dismissed the application holding that summons were served on the petitioner and after receiving notice in the Execution Petition, the petitioner entered appearance in the Execution Petition on 31.10.2013 and filed an application only after 345 days of appearance in the Execution Petition.

6. Against the said order of dismissal, the petitioner has filed the present revision.

7. The learned counsel appearing for the petitioner submitted that the learned Judge is not correct in holding that suit summons were served on the petitioner. The learned Judge without verifying the court records had concluded that suit summons were served on the petitioner. The petitioner came to know about the suit ex parte decree, only when they received notice in the Execution Petition and entered appearance on 31.10.2013 and thereafter, the petitioner filed an application to condone the delay in filing an application to set aside the ex parte decree on 06.11.2013. The learned Judge returned the same and took 10 months time to number the application. The learned Judge failed to see that petitioner has filed an application to condone the delay of 4269 days in filing an application to set aside the ex parte decree, within one week from the date of entering appearance in the Execution Petition. The learned Judge without considering the materials on record has wrongly concluded that petitioner entered appearance only after 345 days of delay, after entering appearance in the Execution Petition. The learned Judge has not properly appreciated the materials on record and committed



irregularity in dismissing the application. The first respondent counsel entered appearance before the Lower Court and made an endorsement on the petition that petition may be allowed on payment of cost and decree cost. The learned Judge failed to consider the said endorsement and has not given any reason for not accepting the same. The counsel for the petitioner further submitted that the petitioner is willing to deposit a sum of Rs.10,00,000/- to the credit of suit without prejudice to their claim on merits.

8. The learned counsel for the first respondent submitted that after verifying the Court records, the learned Judge has held that summons were served on the petitioner and reasons given by the petitioner is not valid and sufficient to condone the delay and dismissed the application. He further submitted that the application may be allowed on payment of cost and Decree cost of Rs.88,912/-.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. The petitioner filed typed set of papers enclosing copies of the petition in Interlocutory application. From the typed set of papers it is seen that the said petition is filed on 06.11.2013. The learned Judge has not taken note of the fact that the application was filed on 06.11.2013, dismissed the application on the ground that petition was filed after 345 days from the date of entering appearance in the Execution Petition. The learned Judge has committed irregularity by not considering the materials on record in proper perspective and failed to exercise his power properly. The learned Judge also failed to consider the endorsement made by the counsel for the first respondent that application may be allowed on payment of cost and decree cost. Considering all these facts and circumstances I hold that petitioner has given sufficient reason to condone the delay in filing an application to set aside the ex parte decree.

11. Taking into consideration of the contention of the learned counsel for the petitioner, the petitioner is directed to deposit the sum of Rs.10,00,000/- to the credit of O.S.No.2 of 2002 on the file of II Additional District Judge, Thoothukudi within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the order passed in I.A.No.181 of 2013 in O.S.No.2 of 2002 on the file of II Additional District Judge, Thoothukudi will be set aside and the delay will be condoned. If the petitioner fails to deposit Rs.10,00,000/- as directed by this Court, the Civil Revision Petition will be dismissed without any further orders.

<https://hcservices.ecourts.gov.in/hcservices/>

12. Accordingly, the Civil Revision Petition is allowed. If the petitioner deposits Rs.10,00,000/-, within the time granted by



this Court, the learned Judge shall set aside the ex parte decree and hear and pass final order in O.S.No.2 of 2002, on the file of II Additional District Judge, Thoothukudi, on merits and in accordance with law. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To

The learned II Additional District Judge, Thoothukudi.

Copy to:

- 1.The Section Officer,VR Section,
Madurai Bench of Madras High Court, Madurai.
- 2.The Sub Assistant Registrar,
CO Department, Madurai Bench of Madras High Court,
Madurai.(To watch cost and intimate to lower court)

+1cc to Mr.S.Sethuraman,Advocate, Sr No.7427

+1cc to M/S.C.JAWAHAR RAVIDRAN, ADVOCATE SR.No. 7512

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MS/SKN/10.03.2017/4P.6C