

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.410 of 1998

Tube Investments of India Limited
Represented by its Company Secretary .. Plaintiff

Vs.

1.M/s.Subahu Investments
Private Limited

2.M/s.Geekay Exim (India) Limited

3.M/s.GK AK Rathi, HUF

4.Gopalakrishna Rathi

5.Anuj Kumar Rathi .. Defendants

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules praying to

(a) direct the defendants jointly and severally to pay an amount of Rs.1,45,72,330/- along with contracted rate of interest @ 26% per annum on the balance principal amount of Rs.94,50,000/- from the date of filing the suit till the date of realisation;

(b) cost of the suit; and

(c) pass such orders as this Honourable Court may deem fit and proper in the circumstances of the case and in the interest of justice.

For Plaintiff : Dr.Syed Shaffi
for M/s.Surana & Surana

For Defendants : Set *ex-parte*

JUDGMENT

Vide proceedings of this Commercial Division dated 15.03.2018, this suit was directed to be listed before the learned Additional Master-III on 19.03.2018 for recording ex-parte evidence. The proceedings of this Commercial Division dated 15.03.2018, reads as follows:

“Read this in conjunction with earlier proceedings of this Commercial Division dated 27.02.2018. It is brought to my notice that the suit was not listed before learned Additional Master III on 08.03.2018 for recording ex parte evidence as per my direction. Now, Ms.M.Jaishree Kumari of M/s.Surana and Surana, Law Firm, before this Commercial Division submits that the plaintiff will be present before learned Additional Master III on 19.03.2018 (Monday).

2. Registry is directed to list this matter before learned Additional Master III on 19.03.2018 for recording ex parte evidence. Learned Additional Master III is requested to complete the recording of ex parte evidence in the light of the submission made by learned counsel for plaintiff that they have only one witness and not more than 25 documents. In any event, learned Additional Master III is requested to complete the recording of ex parte evidence by 22.03.2018.

List the matter before this Commercial Division under the caption 'For Arguments' on 26.03.2018.”

2. I am informed that the suit was listed before the learned Additional

Master-III only on 21.03.2018.

3. Be that as it may, the proceedings of the learned Additional Master-III on 21.03.2018 and 22.03.2018, read as follows:

"21.03.2018 (Listed Today)

Received today from Hon'ble Court for recording ex parte evidence.

Plaintiff's side counsel present. P.W.1 not present. At request by Plaintiff's side counsel to complete the evidence of P.W.1, adjourned to 22.03.2018.

22.03.2018

Plaintiff's side counsel present. P.W.1 not present. Plaintiff's side counsel represented that P.W.1 could not be examined within the time fixed by the Hon'ble Court. So post the matter before Hon'ble Court.

4. Today, Dr.Syed Shaffi of M/s.Surana & Surana, Law Firm for plaintiff has filed a memo dated 26.03.2018, which reads as follows:

"The plaintiff has been informed. The witness has not turned up. The above suit may be dismissed for non-prosecution.

5. To be noted, hard copy of an E-mail sent by the plaintiff's counsel to the plaintiff is also annexed to the memo and the same reads as follows:

"Dear Mr.S.M.Sathish,

The captioned case came up today (21.03.2018) for hearing before the Learned Additional Master-III for recording ex-parte evidence. At the request, the Learned Master adjourned the matter tomorrow i.e., 22.03.2018.

We would request you to be present in Court at 10.30 am tomorrow i.e. 22.03.2018 without fail.

We would also require you to carry board resolution/Power of attorney authorizing you to represent the case tomorrow.

This is for your information.

Warm regards,

For Kalyan Jhabakh.”

6. The proceedings of this Commercial Division dated 15.03.2018, proceedings before learned Additional Master-III on 21.03.2018 and 22.03.2018 as well as memo dated 26.03.2018 filed by the plaintiff's counsel today all of which have been extracted and reproduced supra, speak for themselves and are self explanatory.

7. In the light of the aforesaid trajectory, this Commercial Division has no option other than dismissing the suit for default/non-prosecution.

8. This suit is dismissed for default/non-prosecution. No costs.

WEB COPY

26.03.2018

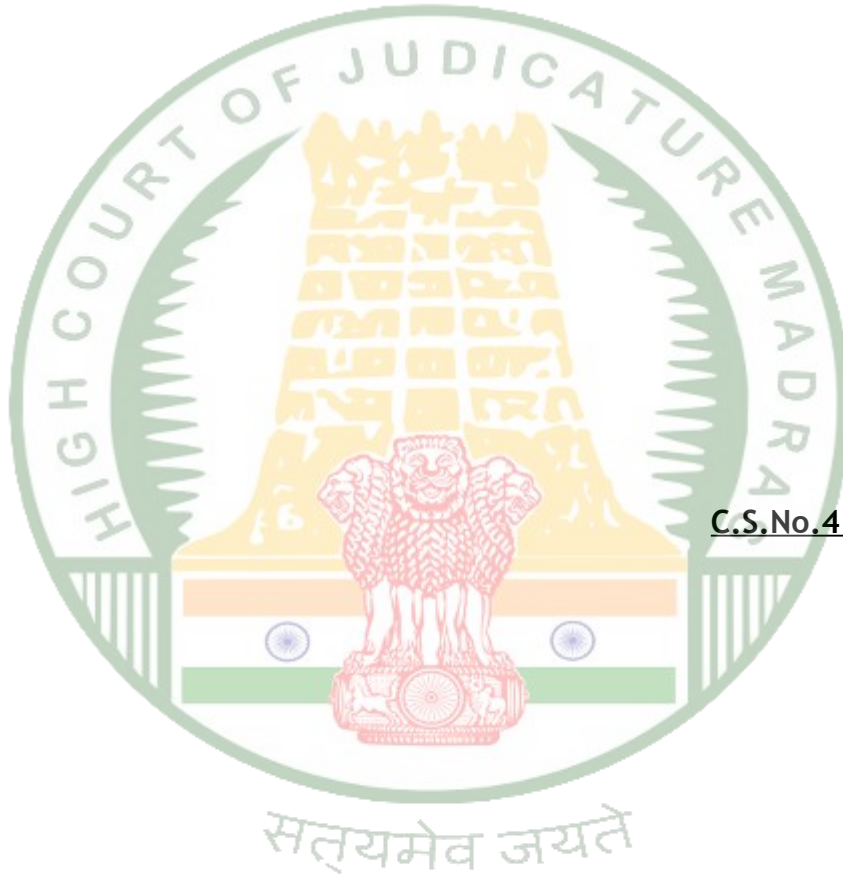
Speaking/Non-Speaking order

Index : Yes/No

vsm

M.SUNDAR, J.

vsm



C.S.No.410 of 1998

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26.03.2018