

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.2618 & 2619 of 2017
and CMP.Nos.14308 & 14440 of 2017

M/s.Terra Manufacturing and
Sales Proprietorship Concern
Through Late. Nirmal Kantha Parmar (Deceased)
Having its registered office at :
C-6, 1st Floor, Greater Kailash Enclave Part-I
New Delhi - 110 048.
Through her legal heir Sh.Yogesh Parmar
S/o.B.D.Parmar
J-4, Sector-25, Jalvayu Vihar
Noida - 201 301. Petitioner in both CMAs

Vs

- 1.Alagendira Apparels Pvt. Ltd.,
Through its Managing Director Sh.N.Ganesan
Having its registered office at
S.F.551, Periyakaadu Thottam
Sirupooluvapatti Post
Tiruppur - 641 603
Tiruppur Taluk. 1st respondent in both CMAs
- 2.Nachimuthu 2nd respondent in CMA.No.2618 of
2017
- 3.N.Ganesan 2nd respondent in CMA.No.2619
of 2017

Common Prayer :-

Civil Miscellaneous Appeal filed under Order 43 R1 r/w.
Sec.104 of the Code of Civil Procedure, 1908 against the fair
and final order dated 20.10.2016 made in E.A.No.292 of 2014 and
E.A.No.206 of 2015 in E.P.No.189 of 2014 on the file of the
Principal District Court, Tiruppur.

For Petitioner : Mr.T.Muruga Manickam, Senior Counsel
for Ms.Zeenath Begum

For Respondents : Mr.Mohammed Ehiya [for R1]
R2 - No Appearance

COMMON JUDGMENT

These two Civil Miscellaneous Appeals are preferred against the order dated 20.10.2016 passed by the learned Principal District Judge, Tiruppur in E.A.No.206/2015 and E.A.No.292/2014 in E.P.No.189/2014, allowing the claim petitions filed by the first respondent.

2.1. The brief facts that are necessary for the current purpose is that for executing an arbitral award, the appellant had moved the High Court of Delhi, which transmitted the award for execution to the Principal Judges Court, Tiruppur. It was taken on record by the District Court, Tiruppur in E.P.No.189/2014. Before the High Court of Delhi, the first respondent had filed two claim petitions and when the award was transmitted to the Principal District Court, Tiruppur, the claim petitions too were transmitted.

2.2. As stated in the earlier paragraph, these two claim petitions were taken on record under the number assigned to them (EA.No.292/2014 & E.A.No.206/15). The value of the execution petition was more than rupees one crore and therefore it appears that the Principal District Court entertained a doubt if it could take on its file the said execution petition, as it exceeded the pecuniary jurisdiction of the District Court.

2.3 On 20.10.2016, when the matter came up before the Execution Court, the counsel on record for appellant/decreed holder who is from New Delhi, could not appear before the Court as his counter-part in Tiruppur did not inform him about the posting of the case. The Execution Court had gone in detail on the merits of the issue on maintainability and held that the execution petition cannot be maintained and dismissed it. On dismissal of the said execution petition, it proceeded to allow both the claim petitions.

3. The learned counsel for the appellant made the following submissions :

a) when once the execution petition is dismissed, the Court

ought not to have allowed the claim petitions as nothing remained on it.

- b) that as against the order dismissing the execution petition, the appellant had preferred CRP (PD) No.407 of 2018 and on 08.02.2018, this was allowed by this Court, setting aside the order of the District Judge, Tiruppur dated 20.10.2016, dismissing E.P.No.189 of 2014 and remanded the matter back to the District Court.

4. Heard the learned counsel for the first respondent.

5. Inasmuch as the execution petition has now been restored to file, thanks to the order passed by this Court in CRP (PD) No.407 of 2018. It is only necessary that the claim petitions too are heard afresh. Hence, these appeals are allowed and order of the Principal District Court, Tiruppur dated 20.10.2016 in E.A.No.292 of 2014 and E.A.No.206 of 2015 in E.P.No.189 of 2014 is set aside and the same is remanded back to the Principal District Court, Tiruppur, which may now consider it de novo pending E.P.No.189 of 2014 and shall be concluded within six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds
To :

1. The Principal District Judge, Tiruppur.

Copy To
The Section Officer
VR Section
High Court, Madras (2 copies)

+1cc to Ms.Zeenath Begum, Advocate, S.R.No.37365
+1cc to Mr.Mohammed Ehiya , Advocate, S.R.No.38520

CMA.No.2618 & 2619 of 2017

MG(CO)
CS/22/06/18