



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) Nos.1437 & 2439 of 2016 (NPD)
and
CMP(MD) No.11478 of 2016

M/s.Naushie Exports
rep.by Proprietor
Q.Lugman

... Petitioner/Petitioner-JD/Respondent/Defendant
in CRP(MD)No.1437 of 2016
& Respondent/Petitioner/Defendant in CRP(MD)
No.2439 of 2016

Vs.

Zim Integrated Shipping Service
(India) Pvt Ltd,
through its Branch Manager,
Rajkumar.

... Respondent/Respondent DH/Petitioner/Plaintiff
in CRP(MD)No.1437 of 2016
& Petitioner/Respondent/Plaintiff in CRP(MD)
No.2439 of 2016

Prayer in CRP(MD) No.1437 of 2016 : This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order passed in E.A No.46 of 2016 in E.P No.18 of 2015 in O.S No.73 of 2012 on the file of the District Judge, Kanyakumari District at Nagercoil, dated 11.07.2016.

Prayer in CRP(MD) No.2439 of 2016 : This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 20.09.2016 passed in I.A No.63 of 2016 in O.S No.73 of 2012 on the file of the Principal District Court, Thoothukudi.

In CRP(MD)No.1437 of 2016 :

For Petitioner

: Mr.M.P.Senthil

For Respondent

: Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

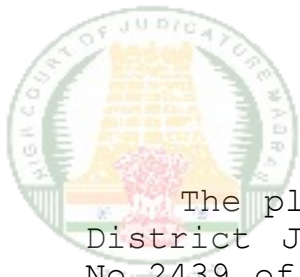
In CRP(MD)No.2439 of 2016 :

For Petitioner

: Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For Respondent

: Mr.M.P.Senthil



COMMON ORDER

The plaintiff in O.S No.73 of 2012 on the file of the Principal District Judge, Tirunelveli is the revision petitioner in CRP(MD) No.2439 of 2015. The suit was decreed exparte. Thereafter, it was put to execution. E.P No18 of 2015 was filed and transmitted to District Court, Kanyakumari at Nagercoil. In the said execution proceedings, property of the defendant was brought to sale. In the meanwhile, the defendant/judgment debtor applied for stay of the execution proceedings. The same was dismissed. Questioning the same, CRP(MD)No.1437 of 2016 was filed. In view of the condition imposed by this Court, the defendant had furnished immovable property as security. To set aside the exparte judgement and decree made in O.S No.73 of 2012, the defendant filed an application under Order 9 Rule 13 of CPC. But then, there was a delay of more than thousand days. To condone the same, I.A No.63 of 2016 was filed. On the date when the matter was posted for enquiry, in the interlocutory application, it appears that no counter was filed by the plaintiff. Therefore, the I.A came to be allowed straight away. Questioning the same, CRP(MD)No.2439 of 2016 was filed.

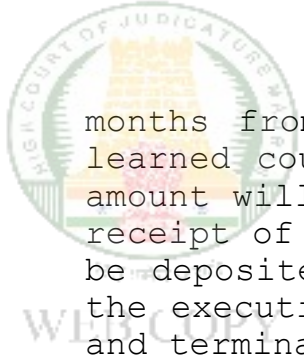
2.Heard the learned counsel on either side.

3.I am of the view that the court below without considering, as to whether sufficient cause was made out or not, chose to allow the condone delay petition filed by the defendant. Therefore, there is considerable force in the submission of the learned counsel appearing for the plaintiff that the order made in I.A No.63 of 2016 should be set aside and the matter remanded.

4.But then, this Court is able to note that certain triable issues have been raised by the defendant. It is for this reason and taking into account the substantive aspects of the matter, this Court confirms the order made in I.A No.63 of 2016. But then, the defendant will have to be put on terms.

5.The learned counsel appearing for the defendant submits that the defendant shall pay a sum of Rs.25,000/- towards costs to the plaintiff. He further undertakes that the defendant would deposit a sum of Rs.2,50,000/- to the credit of O.S No.73 of 2012 on the file of the learned Principal District Judge, Tuticorin. The immovable property security already furnished by the defendant shall continue to remain as security and the defendant is restrained from creating any encumbrance on the same till the proceedings between the parties attain their finality.

6.The court below is directed to allow the set aside petition. The defendant is given one more opportunity to contest O.S No.73 of 2012 on merits. Since six more years have gone by, in the very nature of things, the Trial Judge will have to speedily dispose of the same. The suit shall be disposed of within a period of four



months from the date of receipt of a copy of this order. The learned counsel appearing for the defendant submits that the cost amount will be paid within a period of two weeks from the date of receipt of a copy of this order and the amount of Rs.2.50 lakhs will be deposited within a period of six weeks thereafter. Till then, the execution proceedings shall be kept in abeyance and its revival and termination of the defendant will be based on the outcome of the suit.

7. These Civil Revision Petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal District Judge, Thoothukudi.

2. The District Judge, Kanyakumari District at Nagercoil.

+2cc to Mr.M.P.SENTHIL, Advocate, SR.No. 81693,81694

+2cc to Mr.D.Nallathambi, Advocate, SR.No.81688,81689

CRP (MD) Nos.1437 & 2439 of 2016 (NPD)
and

CMP (MD) No.11478 of 2016
31.08.2018

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