

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.21901 of 2013 and
Crl.M.P.No.1 of 2013

1.M/s.Gowri Spinning Mills (P) Ltd.,
Thokkampathi Post,
Dharmapuri - 636 705.
rep. by its Director K.Kumaresan.

2.K.Kumaresan ... Petitioners

Versus

M/s.Amba Cotspin,
Room No.90, Big Bell Complex,
106, D.B.Road,
Coimbatore - 641 002.
rep by its Authorized Partner,
Mr.Umesh N.Bhutada.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to pass an order withdrawing the case in C.C.No.458 of 2012 on the file of the learned FTC Judicial Magistrate No.I, Coimbatore and transfer the same case to any equally competent Court at Dharmapuri to try it.

For Petitioners : No appearance

For Respondent : Mr.S.Haroon for
M/s.T.S.Gopalan & Co.

ORDER

This Criminal Original Petition has been filed seeking for transfer of the proceedings in C.C.No.458 of 2012.

2.When the matter is taken up today ie., on 27.06.2019, there is no representation on behalf of the petitioner either in person or by his counsel.

3.The gist of the case is that the petitioner was running a M/s.Gowri Spinning Mill Private Limited, situated at Thokkampatti Post, Dharmapuri indulging in converting the cotton into cotton yarns. The respondent, who was running M/s.Amba Cot Spin had entered into job conversion agreement with the petitioner. As per the terms of the job conversion agreement, the respondent deposited a sum of Rs.55,00,000/- to the petitioner as refundable.

4.The job conversion agreement could not be taken forward and it was terminated on 31.03.2011. On termination of the agreement, the petitioner had paid a sum of Rs.10,00,000/- by two cheques and for balance payment of Rs.45,00,000/-, the cheque bearing No.320226 issued by the petitioner on 31.12.2011 in favour of the respondent. When the respondent presented the said cheque for collection on 09.02.2012 drawn in Indian bank, R.S Puram Branch, Coimbatore, but the same was returned for the reason "Insufficient Funds". Thereafter, the respondent issued legal notice on 17.02.2012 to that effect. Though, the notice received by the petitioner, he neither replied to the same nor made the payment. Hence, the respondent filed a complaint against the petitioner.

5.Since the petitioner is hailing from Dharmapuri and due to his health condition, he is unable to travel such a long distance to appear before the Court below. Hence, he filed this petition for transfer of proceedings in C.C.No.458 of 2012 on the file of the learned FTC Judicial Magistrate No.I, Coimbatore.

6.The learned counsel for the respondent would submit that the petitioner is attending his daily routine works. The grounds raised by the petitioner to transfer the case is only for the purpose of drag the proceedings. He would further submit that in this case PW1 was examined on 08.05.2013 and thereafter it was posted for cross examination and the petitioner did not appear before the Court below. Hence, the trial Court issued NBW on 05.12.2014 and after three years the same was recalled. Subsequently, again during December 2017, the petitioner had failed to appear before the Court below and NBW has been issued and the case was posted on 19.07.2019. Hence, the respondent is in great difficulty to pursue the above case and prayed for dismissal.

7.Considering the facts and circumstances, this Court finds that this is a example case of accused dragging the proceedings under Section 138 of N.I Act and delay in paying complainant's due. Though the petitioner is due for pay a sum of Rs.45,00,000/- to the respondent, he has been successfully evading the payment from the year 2011 onwards and also avoiding to appear before the Court below by stating one reason or other.

Due to the pendency of the above Criminal Original Petition, the petitioner had been successfully dragging the proceedings of the trial Court.

8.This Criminal Original Petition stands dismissed, with a direction to the trial Court to complete the proceedings in C.C.No.458 of 2012 within a period of the two months from the date of receipt of a copy of this order and report compliance. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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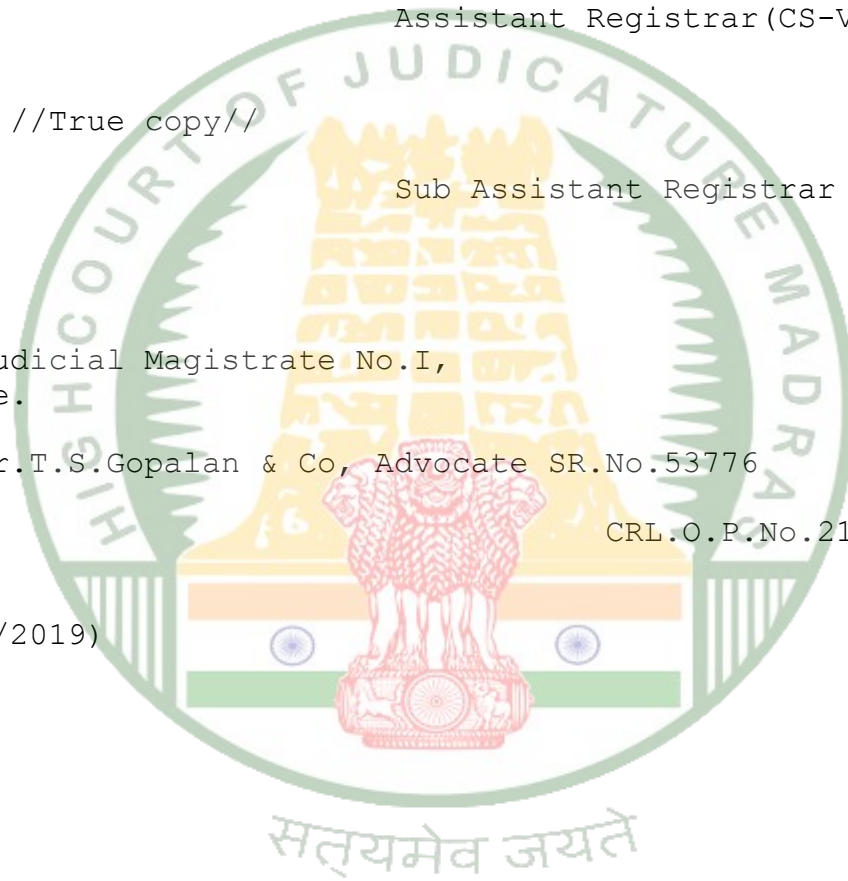
To

The FTC Judicial Magistrate No.I,
Coimbatore.

+1cc to Mr.T.S.Gopalan & Co, Advocate SR.No.53776

CRL.O.P.No.21901 of 2013

NR (CO)
GMY (21/08/2019)



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