

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.1864 of 2013

and

M.P.No.1 of 2013

Mallini Sanghvi Securities Private Limited
changed as

MSS Securities Private Limited
Represented by its Director,
Mr.Ajit R.Sanghvi,
Office at 107-A, 10th Floor,
Jeejeebhoy Towers,
Dalal Street,
Mumbai - 400 001. ... Petitioner

Vs

M/s.Coimbatore Capital Private Limited,
Stock Exchange Building,
Office at 1st Floor,
686, Trichy Road,
Coimbatore - 600 005. ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the
Code of Civil Procedure, 1908 against the fair and decreetal
order dated 25.06.2012 in I.A.No.608 of 2011 in O.S.No.562 of
2004 on the file of Principal Subordinate Court, at Coimbatore.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.H.Karthik Seshadri for
M/s.Iyer & Thomas

O R D E R

This revision petition has been filed against the order of
the trial Court in dismissing the application filed by the
petitioner to condone the delay of 1996 days in filing the
petition under Order IX Rule 13 of the Civil Procedure Code to
set aside the exparte decree dated 11.08.2005.

2.The learned Counsel for the revision petitioner submitted that the company's name has been changed on 27.07.2002. Thus, prior to 27.07.2002, the company was carrying business in the name and style of "Mallini Sanghvi Securities Private Limited" and the said name change has been intimated to the respondent. Further, the learned Counsel for the revision petitioner has also submitted that even after the name change, the respondent has been directed to refund a sum of Rs.2,00,000/- in the arbitration proceedings vide arbitration award dated 25.06.2004 and suppressing the said fact, they have obtained the exparte decree dated 11.08.2005.

3.It is the further contention of the revision petitioner that after the receipt of summons, they addressed letters dated 17.03.2005, 06.04.2005 and 26.05.2005 requesting the I Additional District Judge, Coimbatore to give direction to the respondent/plaintiff to amend the plaint regarding the change of name of the petitioner's/defendant's company. However, the same has not been done by the respondent. Thereafter, for the first time on 31.01.2011, it is brought to the notice of the petitioner about the exparte decree which was passed on 11.08.2005. Hence, there is a delay of 1996 days in filing the petition.

4.The above application, to condone the delay of 1996 days was opposed by the respondent on the ground that even after the alleged name change, the petitioner has appeared in the same old name in the arbitration proceedings and issued a cheque in favour of the respondent. Hence, the learned Counsel for the respondent submitted that the trial Court has rightly held that there is no sufficient cause for condoning the delay and dismissed the said application.

5.The learned Counsel for the revision petitioner further contended that the summons have not been duly served and a mere perusal of the copy of the summons would indicate that the copy of the plaint has not been served along with summons. Therefore, without the copy of the plaint being served, there cannot be due service of summons. Further, it is seen from the contention of the learned Counsel for the revision petitioner that the company's name has been changed as early as in 2002 whereas, the suit has been laid in the old name, which is not maintainable in law.

6.In support of his contentions, he has also relied upon the Judgment of the Calcutta High Court in "Pioneer Protective Glass Fibre P. Vs.Fibre Glass Pilkington Ltd." reported in "1986 60 CompCas 707 Cal" and in "D.Srinivasaiah V.The Vellore

Varalakshmi Bank, Ltd., by its Managing Director, Sri V.S.Subramani Chettiar" reported in "67 Law weekly 303" and the Judgment of the Hon'ble Supreme Court in "Nahar Enterprises Vs.Hyderabad Allwyn Ltd., and another" reported in "(2007) 9 Supreme Court Cases 466".

7.The learned Counsel for the respondent would contend that the delay is huge and the defendant has got knowledge about the summons and they have received the summons and in fact, they have sent several communications to the Court even after the receipt of summons. Therefore, it cannot be contended that there is no proper service of summons. Further, it is the contention of the learned Counsel for the respondent that even before the arbitration proceedings the name has been changed. However, they appeared in the same old name in the arbitration proceedings and a sum of Rs.2,00,000/- has been paid by the revision petitioner/defendant. Therefore, merely because the suit has been filed in the original old name, the same would not affect the suit and moreover, contended that the above issue is not relevant to the present application.

8.I have perused the materials on record and the impugned order. The suit has been originally filed in the year 2004 by "Mallini Sanghvi Securities Private Limited" for recovery of certain amount and finally the suit was decreed exparte and the exparte decree was passed on 11.08.2005. The present application was filed on 22.06.2011 to condone the delay of 1996 days in filing the petition to set aside the exparte decree. The contention of the revision petitioner/defendant is that there is no due service of summons which cannot be countenanced in this revision petition because the summons have been served thrice and the revision petitioner/defendant has sent communications to the Court to direct the respondent/plaintiff to amend the plaint regarding the name change of the petitioner's company. The very communications to the Court itself clearly indicate that summons have been properly served.

9.Further, contention of the learned Counsel for the revision petitioner that the plaint copy has not been annexed with the summons and therefore any service cannot be construed as the proper service of summons, this Court has called for the material papers and found that the summons were served along with the plaint copy. Therefore, at the outset, I reject the submissions of the learned Counsel for the revision petitioner that the summons have not been properly served on him.

10.The main contention of the application to condone the delay of 1996 days is that the revision petitioner/defendant has

got no knowledge of the suit proceedings since the summons have not been served. As already indicated above, summons have been served and communications have also been sent by the revision petitioner to the I Additional District Court, Coimbatore. Therefore, the main contention of the revision petitioner that there is no proper service of summons has no legs to stand.

11.Yet another contention of the learned Counsel for the revision petitioner is that the suit has been filed in the name of "Mallini Sanghvi Securities Private Limited" despite the fact that the company's name has been changed to "MSS Securities Private Limited" on 27.07.2002. On a careful perusal of the typed set, the company's name has been changed on 27.07.2002 and thereafter, the matter has been referred to arbitration and in fact, the arbitration has been continued in the original old name even after the name change.

12.Subsequently, the arbitration proceedings were concluded on 25.06.2004 and the respondent has been directed to refund the security deposit of Rs.2,00,000/- within two weeks from the date of receipt of the award and the claim raised has been rejected by the tribunal as it has no jurisdiction. Even at the time of passing of the award, the company's original old name was mentioned in the award. Thereafter, it appears that the respondent has been paid Rs.2,00,000/- by the revision petitioner. Even in the letter from BSE, The Stock Exchange, Mumbai dated 07.01.2005, the name of the company was mentioned as "MSS Securities Pvt.Ltd.". Therefore, mere name change cannot be a ground to set aside the exparte decree by condoning the huge delay of 1996 days.

13.Further, in my considered opinion, a person coming to the Court to set aside the exparte decree should offer sufficient cause which should be acceptable by this Court. The main grounds taken are that the summons have not been served and the suit has not been laid properly after name change, are not valid grounds to set aside the exparte decree as they do not afford sufficient cause. Admittedly, when the delay has not been explained and the proceedings are being watched by the revision petitioner and the communications are being sent by the petitioner to the Court by their letters, it is to be noted that such letters addressed to the Court itself clearly indicate that they were aware of the proceedings. Such letters cannot be given any importance by this Court as per Rule 22 of the Civil Rules of Practice. Rule 22 of the Civil Rules of Practice prohibits sending any proceedings by post but whereas after receipt of the summons, they sent communications to the Court for a direction to change the cause title. After being sent such

communications to the Court, the revision petitioner cannot now contend that he should be given an opportunity to contest the suit. After the receipt of summons, he ought to have appeared before the Court and filed written statement raising all the grounds, whereas having slept all these years and suddenly, coming before this Court to set aside the exparte decree, is not fair on their part.

14.The Judgment of the Hon'ble Supreme Court in "Nahar Enterprises Vs.Hyderabad Allwyn Ltd., and another" reported in "(2007) 9 Supreme Court Cases 466" sighted by the learned Counsel appearing for the revision petitioner with regard to non service of summons is not applicable to the facts of this case since the summons have been duly served. Similarly, in the Judgment of "D.Srinivasaiah V.The Vellore Varalakshmi Bank, Ltd., by its Managing Director, Sri V.S.Subramani Chettiar" reported in "67 Law weekly 303" relied by the learned Counsel was carefully seen. In the above Judgment, this Court has held that even if the proceedings are initiated against the former name of the company, the fact that the alteration in the name will not bring any defective or irregularity. Further, the Judgment of the Calcutta High Court in "Pioneer Protective Glass Fibre P. Vs.Fibre Glass Pilkington Ltd." reported in "1986 60 CompCas 707 Cal" is also not applicable to the facts of this case.

15.The entire order of the trial Court has been carefully perused. On perusal, it is seen that there is no sufficient cause shown by the revision petitioner. Of course, the word 'sufficient cause' has to be given a liberal approach to advance the substantial justice, whereas to extend such liberal approach, there must be acceptable reasons. When the parties are all along watching the proceedings to complete and finally if they come to the Court only to avoid decree, they are not entitled to any leniency in the Court of law.

16. In fact, during the arguments, the learned Counsel for the revision petitioner has also submitted that the revision petitioner is ready to pay Rs.10,00,000/- and in fact brought the Demand Draft for the said amount. But the respondent has not agreed for the same, since the decree amount is huge. At any event, sufficient cause has not been found in the application for condonation of delay filed by the revision petitioner to set aside the exparte decree. Hence, I do not find any error or illegality in the order passed by the trial Court.

17. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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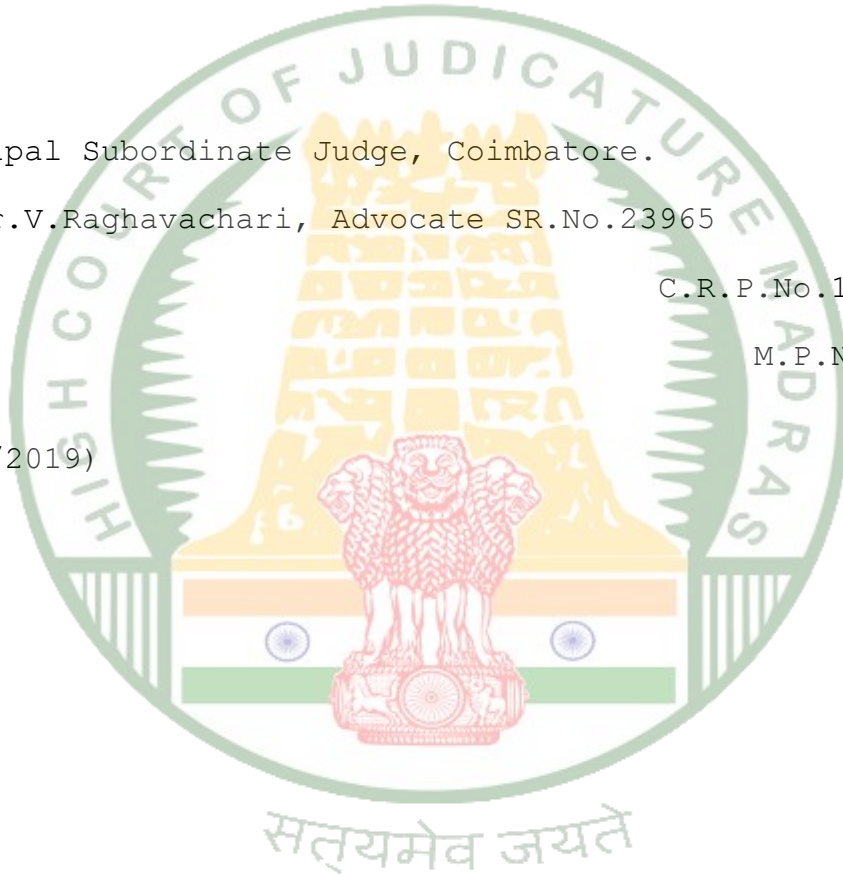
To

The Principal Subordinate Judge, Coimbatore.

+1cc to Mr.V.Raghavachari, Advocate SR.No.23965

C.R.P.No.1864 of 2013
and
M.P.No.1 of 2013

GP (CO)
GMY (08/05/2019)



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