

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 12.02.2019

Pronounced On: 15.02.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.49 of 2014

and

M.P.No.1 of 2014

E.Chandrasekar

... Petitioner

Vs.

M/s.Sriram City Union Finance Ltd.,
No.123, Angappa Naicken Street,
Chennai – 600 021.

... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC, to set aside the dismissal order of the IX Assistant Judge City Civil Court, Chennai in E.A.No.4239 of 2012 in E.P.No.2771 of 2012 in A.C.P.No.SCUF/CAR 65/10.

For Petitioner : Mr.Prakash Paul

For Respondent : Mr.K.V.Anantha Krishnan

ORDER

The present Civil Revision Petition has been filed to set aside the Order passed by the IX Asst. Judge City Civil Court Chennai in E.A.No.4239 of 2012 in E.P.No.2771 of 2012 in A.C.P.No.SCUF/ CAR 65/ 10 (herein after referred to as the lower Court).

2.The petitioner is the Judgment debtor, who suffered an award on 28.06.2010 in an Arbitration Proceedings bearing reference A.C.P.No.SCUF/ CAR/ 65/10. The respondent further filed E.P.No.2771 of 2012 to execute the award on 25.12.2012. The petitioner was set ex-parte on 21.08.2012.

3.Under these circumstances, E.A.No.4239 of 2012 in E.P.No.2771 of 2012 in A.C.P.No.SCUF/ CAR65/10 was filed by the petitioner on 21.10.2012, to set aside the ex-parte order passed on 21.08.2012 under Order 21 Rule 106 of CPC.

4.By an Order dated 25.11.2013 the lower Court declined to set aside the ex-parte order dated 21.08.2012. The Court made it clear that the application ex-parte and pass orders as thinks it fit, if the Judgment debtor does not appear.

WEB COPY

5.The lower Court has held that the petitioner herein ought to have filed the application under Order 21 Rule 106 (3) within a period of 30 days of from the dated of order setting the petitioner ex-parte. However, the application was filed 24 days thereafter and therefore not maintainable.

6. The petitioner claims that he was unaware of the award passed by the arbitrator and became aware of the same only when the petitioner was served with a notice on 20.08.2012, seeking to attach his property stating that the case was fixed for hearing on the following day i.e. 21.08.2012.

7. However, the petitioner filed the application to set aside the ex-parte order dated 21.08.2012 claiming there was a delay of 14 days. The petitioner filed the petition on 05.10.2012. Thus, the application was filed beyond 14 days, after the expiry 30 days.

8. As per sub-clause (3) to Rule 106 to Order 21 specifies that an application has to be filed within 30 days of knowledge of ex-parte order.

9. However, Rule 106 to Order 21 of CPC specifies a special period of limitation of 30 days for filing an application to set aside an ex-parte order. At the same time, it does not exclude applicability of Section 5 of the Limitations Act 1963.

10.Hon'ble Supreme Court in **Union of India vs Popular Construction Co.** (2001) 8 SCC 476 while dealing Section 34 of the Arbitration & Conciliation Act,1966. In paragraph 8 observed an under.

"8.Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5"."

11.Thus, it is clear in the context of Order 21 Rule 106 applicability of Section 5 of the Limitations Act, 1963 is not excluded. In paragraph 11 the Court summarized as follows:-

"11.Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded."

12.Further, this Court in **N.Rajendran vs Shriram Chits Tamil Nadu Pvt.Ltd.** (2011) 6 268 has come to the same conclusion based on a different reasoning. As the applicability of Section 5 of the Limitation Act, 1963 is not excluded, the lower Court was not justified in dismissing the application to condone the

delay of 14 days in filing the application. Consequently, the order is set aside with consequential relief.

13.The IX Assistant Judge City Civil Court is therefore directed to take up the execution proceeding and dispose the same after allowing the petitioner to raise objections if any that may be available in law. Since, the E.P. is of the year 2012, it is expected the Court will bring an early closure of the proceedings within six months from the date of communication of this order.

14.This Civil Revision Petition is disposed of with above observations. Consequently, Connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

15.02.2019

Index :Yes/No
Internet :Yes/No
Speaking Order : Yes/No

jen

C.SARAVANAN, J.

jen

To

The IX Assistant Judge
City Civil Court, Chennai



Pre-Delivery Order made in

C.R.P.(NPD).No.49 of 2014
and
M.P.No.1 of 2014

WEB COPY

15.02.2019