

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(NPD) Nos.3726 & 3727 of 2019

and

C.M.P.No.24483 of 2019

M/s.Eagle Flask Industries Limited,
Rep. By its Executive Director,
Mrs.Shamin M.Padamsee,
Thiru Vi Ka Industrial Estate
Guindy, Chennai – 600 032.

... Petitioner in both CRPs

Vs.

M/s.Tamil Nadu Small Industries
Corporation Ltd.,
Rep. By its Chairman &
Managing Director,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600 032.

... Respondent in both CRPs

Prayer in CRP.No.3726/2019: Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree of the Learned VII Small Causes Court, dated 26.08.2019 passed in M.P.No.123 of 2019 in M.P.No.394 of 2018 in R.C.A.No.386 of 2007.

Prayer in CRP.No.3727/2019: Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree of the Learned VII Small Causes Court, dated 26.08.2019 passed in M.P.No.394 of 2018 in R.C.A.No.386 of 2007.

For Petitioner

: Mr.Akbar Ali Dhala

COMMON ORDER

These civil revision petitions have been filed against the fair and decretal orders made in M.P.No.123 of 2019 in M.P.No.394 of 2018 in R.C.A.No.386 of 2007 and in M.P.No.394 of 2018 in R.C.A.No.386 of 2017 on the file of the VII Small Causes Court, Chennai, by order dated 26.08.2019.

2.Before the Rent Control Court, the respondent suffered with an order of R.C.O.P.No.734 of 2006 filed by him, as against which, R.C.A.No.386 of 2007 filed by the respondent/landlord i.e., Tamil Nadu Small Industries Corporation Limited, was taken on file. When the said RCA was taken on file, since the lower Court records did not receive, it seems to have been adjourned time and again on various dates in February, 2018. On those dates, even though the respondent/appellant was present through counsel, on 20.02.2018, when the case was called, the respondent could not present and on that day, since the records have come, the Appellate Court wanted to take it up on that day, since it found that the respondent was not present, the RCA was dismissed for default on 20.02.2018. In order to restore the said RCA, which was dismissed for default on 20.02.2018, he filed a

petition in M.P.No.394 of 2018, along with that, since there has been a delay, a condone delay petition should have been filed. Even though, according to the respondent, it was prepared, due to misplacement, it was not immediately filed, however, the counsel on bonafide impression seems to have stated that, the condone delay application also was filed. However, subsequently, he came to know that, the condone delay petition to condone the delay in filing a petition to restore the dismissed RCA, since was not filed, subsequently the same was filed, of course, in the meanwhile, there has been a delay of 93 days. Therefore, M.P.No.123 of 2019 was filed to condone the said delay. Since these applications have been allowed and the RCA was restored through the impugned orders respectively, aggrieved over the same, the revision petitioner/tenant, who was the respondent in the MP as well as the RCA before the First Appellate Court, have filed the present revision petitions.

3.I have heard Mr.Akbar Ali Dhala, learned counsel appearing for the revision petitioner, who would submit that, as against the dismissal of RCA for default dated 20.02.2018, when MP was filed to restore the same, since there had been a delay, condone delay petition ought to

have been filed and without the condone delay petition, since M.P.No.123 of 2019 was taken on file by the Court below and it was numbered, it was specifically pointed out by the revision petitioner who was the respondent in MP and a counter affidavit has also been filed, some time in October 2018 and only thereafter, sensing the fault committed by the respondent, he has filed M.P.No.123 of 2019 only in December, 2019 with some flimsy reason and those reasons since have been erroneously accepted and both applications filed by the respondent to condone the delay as well as to restore the RCA, which was dismissed for default were allowed, as against which, these revisions have been filed.

4.I have considered the said submissions of the learned counsel appearing for the revision petitioner.

5.Actually the delay, even though was belatedly found and subsequently filed a petition to condone the delay, it was only 93 days and why that delay had occurred and why at the time of filing the petition to restore the appeal, the condone delay petition was not filed, reasons have been given by the respondent in the affidavit filed in

support of M.P.No.123 of 2019. In this connection, the relevant portion of the said affidavit is extracted herein:

"5. Moreover, it is respectfully submitted that, the above appeal had continuously been adjourned for AWAITING RECORDS from 25.7.2011, to 01.02.2018. Unfortunately, after 01.02.2018, the matter was posted for arguments on 06.02.2018, and was called, again, for arguments, on extremely short gaps, on 09.02.2018, 13.02.2018, and 20.02.2018, the records suddenly being received before this Hon'ble Court, before 06.02.2018. The case was dismissed on the ground of non-appearance on 20.02.2018, even though the Respondent Representative Counsel properly appeared before this Hon'ble Court continuously during the AWAITING RECORDS period.

6. Under the mentioned circumstances, the officials of TANSI inquired about the case. I verified the registry of this Hon'ble Court immediately, and noticed that the RCA was dismissed for default, on 20.02.2018, on the ground of non-appearance. Even though our client did not inform the hearing date to me.

7. I was advised to file an application to restore the appeal, along with the condonation petition, and file the same at this Hon'ble Court accordingly. In pursuance of the same, I filed the restoration petition, however, the condonation petition was misplaced in the Court campus. In the impression of the Appeal having been filed, I returned to my native place, due to the paralysis of my father, in the leg and the hand, and my mother, in the hand. The restoration petition was numbered MP.No.394 / 2018. I became aware of the misplacement only in the middle of October 2018.

8. In consequence of the same, there has been occasioned a delay of 93 days, in filing an appeal to restore the above appeal. The said delay has neither been wilful nor intended."

6.I have gone through the reasons stated therein.

7.Since the delay is only 93 days and some bonafide reasons have been given and moreover, already M.P.No.394 of 2018 had been taken on file and numbered and only to condone the said delay of 93 days in filing the said restoration petition, since it has been filed subsequently, the Court below, having taken note of these factors instead of dismissing the applications thereby the right of the respondent to pursue his case in the main RCA would also get defeated, allowed the said applications.

8.This Court, after having gone through the reasons and the materials placed before this Court, is of the considered view that, there is no apparent error on the face of the record and no perversity can be found in the said orders passed by the Court below which are impugned herein.

9.Moreover, the delay is only 93 days and reasons have been given in the affidavit filed in support of the application to condone the said delay of 93 days and it is for the Court to take it as to whether the

reasons cited by the party to condoning the delay are acceptable or not and once the Court, having applied its mind, accepted the delay, that too, for a limited delay of 93 days only, this Court feels that, no interference is required. Otherwise, if these applications are dismissed and these revisions are allowed, then, it will snatch away the chance of agitating the issue on merits in the main appeal, which is the substantive right of the party i.e., the respondent herein, so this Court feels that, such kind of substantive right need not be taken away or abrogated without any strong reason.

10. In that view of the matter, this Court feels that both the impugned orders are liable to be sustained, accordingly, these revision petitions fail, hence, they are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

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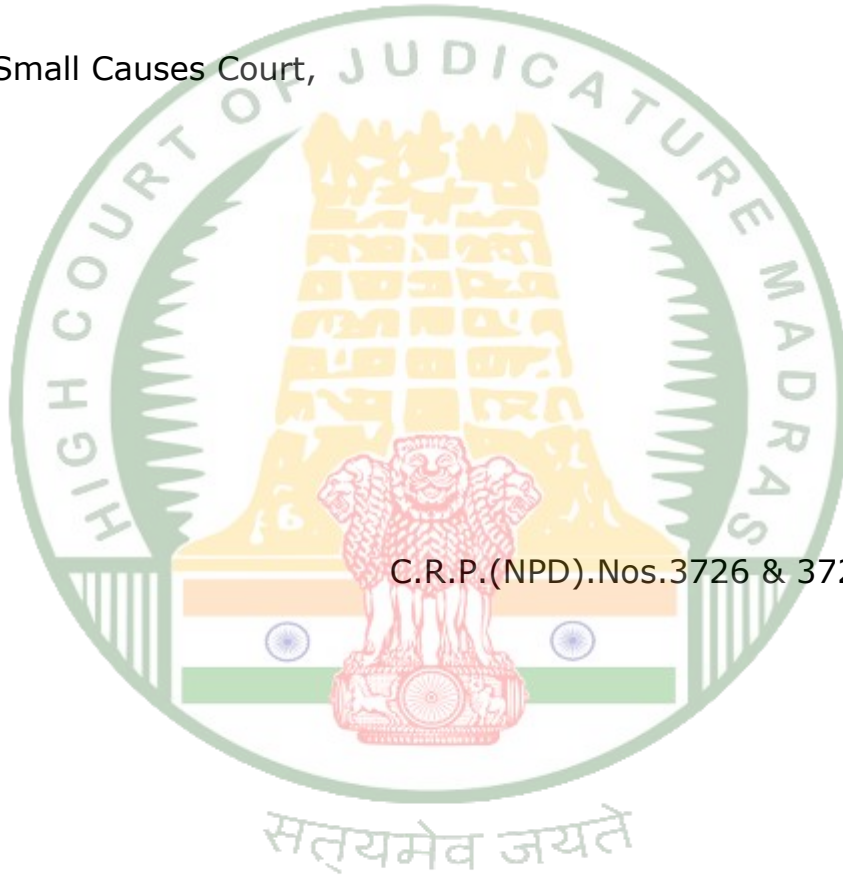
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R.SURESH KUMAR, J.

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To
The VII Small Causes Court,
Chennai.



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