THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

CIVIL REVISION PETITION Nos.579 and 1849 of 2019

COMMON ORDER (per Hon'ble Sri MSR,J)

These two Civil Revision Petitions arise out of the same suit between the same parties and hence, they are being disposed of by this common order.

2. The petitioner in both the revision petitions is the plaintiff in C.O.S.No.1 of 2018 on the file of Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.

3. The suit was filed in July 2016 by the petitioner as a pauper for recovery of amount against respondent Nos.1 and 2/defendant Nos.1 and 2 to a tune of Rs.64,96,77,223/- with interest.

4. The pauper suit had been numbered earlier as C.O.P.No.24 of 2016 before the Judge,-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.

5. Summons in C.O.P.No.24 of 2016 were sent to respondent Nos. 1 and 2 and they received the same.

6. Thereafter, the pauper application under Order XXXIII C.P.C (pauperism) was allowed and C.O.P.No.24 of 2016 was renumbered as C.O.S.No.1 of 2018.

7. Thereafter also, summons were sent to respondent Nos.1 and 2. The postal cover containing the summons sent to respondent No.1 was returned as 'refused'. Publication under

Order V Rule 20 C.P.C. was directed against respondent No.2, and such publication was made in the newspaper and it was filed.

8. Thereafter, on 05.07.2018 in C.O.S.No.1 of 2018 both respondent Nos.1 and 2 were set *ex parte*.

9. I.A.No.695 of 2018 in C.O.S.No.1 of 2018 was filed on 13.11.2018 by respondent Nos. 1 and 2 to set aside the order dt.05.07.2018 seeking them *ex parte*.

10. In the affidavit filed in support of I.A.No.695 of 2018, respondent Nos. 1 and 2 admitted that they received summons in C.O.P.No.24 of 2016 and they entered appearance; that later pauper application was allowed and C.O.P was renumbered as C.O.S.No.1 of 2018; that summons were again sent to respondent Nos. 1 and 2 at the addresses mentioned in the suit cause title; that respondent No.1 was not "actively" functioning and therefore, the summons were not served. It was contended that thereafter, on verification, respondent Nos. 1 and 2 came to know about the order dt.05.07.2018 setting them *ex parte* and they filed I.A.No.695 of 2018 on 13.11.2018 to set aside the order dt.05.7.2018 in C.O.S.No.1 of 2018.

11. Counter-affidavit was filed by the petitioner/plaintiff opposing the same contending that filing of I.A.No.695 of 2018 by respondent Nos.1 and 2 is an abuse of process of Court. It was asserted that in C.O.P.No.24 of 2016 respondent Nos. 1 and 2 received notices, entered appearance and contested. The pauper application was allowed on 02.01.2018 and suit was directed to be registered. It is also pointed out that after the suit was registered

as C.O.S.No.1 of 2018, it was posted to 09.02.2018 to issue summons to respondent Nos. 1 and 2; that on 05.06.2018, the Court below directed to issue summons to respondent No.1 by speed post and ordered for issue of summons to respondent No.2 through paper publication in 'Andhra Jyothi' Daily Newspaper in Hyderabad Edition; that notice sent by Speed Post to respondent No.1 was returned with an endorsement "unclaimed"; that publication insofar as respondent No.2 was made in 'Andhra Jyothi' Daily Newspaper, Hyderabad Edition on 09.06.2018; that only after sufficient service on respondent Nos. 1 and 2, by an order dt.05.07.2018, the Court below set respondent Nos. 1 and 2 *ex parte*. Other contentions about competency of deponent of the affidavit filed in support of I.A.No.695 of 2018 to file the said I.A. were raised.

12. The Court below allowed I.A.No.695 of 2018 on 20.11.2018. The docket order of the same reads as follows:

> "Counter filed. Heard perused the record, address shown in the cause title is wrong. Hence in the interest of justice, petition is allowed."

13. Challenging the same, C.R.P.No.1849 of 2019 is filed.

14. On 20.11.2018 in C.O.S.No.1 of 2018, the Court below after it had set aside the order dt.05.07.2018 <u>received the written statement of respondent Nos. 1 and 2</u>/defendant Nos.1 and 2.

15. This is challenged in C.R.P.No.579 of 2019.

16. This Court had summoned the record of the Court below to ascertain whether, in fact, summons were issued to respondent Nos. 1 and 2, after the suit was numbered on 02.01.2018.

17. It is pertinent to note that the postal cover sent by the petitioner by speed post to respondent No.1 to its registered office is returned with endorsement "refused." In law, this amounts to service on the 1st respondent. As regards the 2nd respondent, it is nothing but a branch office of respondent No.1. Once the 1st respondent is served, the 2nd respondent is also deemed to be served. In any event, notice to the 2nd respondent was published in 'Andhra Jyothi' Daily Newspaper, Hyderabad Edition. Since branch office of the 1st respondent i.e., the 2nd respondent is located in Hyderabad, the service on the 2nd respondent is also to be taken as valid.

18. It is shocking that the Court below, without adverting to this aspect of the matter, and without recording the contentions of the petitioner, passed a cryptic order referred to above on 20.11.2018 in I.A.No.695 of 2018.

19. In our considered opinion, respondent Nos.1 and 2 received summons in C.O.P.No.24 of 2016 and entered appearance through counsel. So they were aware of the proceedings in the suit, which was numbered as C.O.S.No.1 of 2018 after pauper application was allowed. In our opinion, there was no necessity to issue fresh summons to respondent Nos. 1 and 2 after the suit was numbered.

20. Be that as it may, in the facts and circumstances of the case, such summons were issued to respondent Nos. 1 and 2 after

numbering of the C.O.P as C.O.S No.1 of 2018, and as pointed out above, the postal cover sent to the 1st respondent indicating the registered office of the company was "refused" by the addressee. Therefore, the 1st respondent is deemed to be served.

21. As noted above, the 2nd respondent is nothing but a branch office of the 1st respondent and when the 1st respondent company is served, the branch office is deemed to be served. In any event, notice to the 2nd respondent was taken out in 'Andhra Jyothi" Daily Newspaper by way of publication pursuant to the order passed by the Court below and publication was made. Therefore, even the 2nd respondent is deemed to be served.

22. In our opinion, the averment in the affidavit in I.A.No.695 of 2018 that respondents 1 and 2 did not receive summons after the suit was numbered as C.O.S.No.1 of 2018 is a false averment and could not have been believed by the Court below. It is nobody's case that address of the 1st respondent was shown incorrectly. The plea of respondents that the 1st respondent is not "actively" functioning, cannot be countenanced. Therefore, once the 1st respondent is served at its registered office, there cannot be any grievance made by respondent Nos.1 and 2 in that regard.

23. Therefore, C.R.P.No.1849 of 2019 is allowed. The order dt.20.11.2019 passed in I.A.No.695 of 2019 in C.O.S.No.1 of 2018 by the Judge- Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, is set aside and the said I.A.No.695 of 2018 is dismissed.

24. The order dt.20.11.2018 passed in C.O.S.No.1 of 2018, with regard to receipt of written statement filed by respondent Nos.1 and 2 also cannot be sustained. Admittedly, the said written statement was filed by respondent Nos. 1 and 2 on 13.11.2018 i.e., more than after 120 days from the date of receipt of summons. As held by the Hon'ble Supreme Court in **M/s. SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. and others**[1] (Civil Appeal No.1638 of 2019), period of 120 days to file written statement in proceedings pending in Commercial Court, is mandatory.

25. Therefore, the Court below ought not to have received the written statement filed by respondent Nos. 1 and 2 beyond the time fixed under proviso to Order VIII Rule 1 C.P.C., as amended by Act 28 of 2018.

26. Therefore, C.R.P.No.579 of 2019 is also allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these two civil revision petitions shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

10th December, 2019

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[1] 2019 (2) ALT 48 (SC) = AIR 2019 SC 2691

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Date:10.12.2019

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