

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. NPD 4784 of 2015

and

M.P. 1 of 2015

M/s. Schenker India Private Ltd.,
having their registered office
at No.93-94, Kapashera,
New Delhi-110 037.
and branch office at No.42,
North Phase Industrial Estate,
Ekkattuthangal, Chennai-97. ... Petitioner

Versus

M/s.Led Tex Products Private Ltd.,
rep. by its Director
Sanjay Dhurka,
182/1, Lake View Road,
West Mambalam,
Chennai-33. ... Respondent

PRAYER : Civil Revision Petition is filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 24.08.2015 passed by Hon'ble XVI Asst. City Civil Court, Chennai in I.A. 18961 of 2014 in O.S. 4220 of 2010.

For Petitioner : M/s.Paul and Paul

For Respondent : Mr.N.Chandraraj

ORDER

This Civil Revision Petition has been filed against the order dismissing petitioner's application to condone the delay of 23 days in filing the application to set aside the exparte decree.

2. The respondent/plaintiff filed a suit for recovery of a sum of Rs.73453/-. In the above suit, the petitioner/defendant was set exparte, and an exparte decree was passed on 17.08.2011. Thereafter, the petitioner has filed an application to set aside the exparte decree on 10.10.2011 with the delay of 23 days. That application came to be dismissed by the court below. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for petitioner would submit that, the suit is posted for trial in the special list on 08.07.2011. Since the counsel has wrongly noted the date of hearing, he has not appeared on the date of hearing. Hence, the petitioner was set exparte, and an exparte decree was passed.

Immediately, an application was filed on 10.10.2011 with the delay of 23 days, but that application was not numbered, and it was kept pending. Thereafter, that application was got numbered only in December 2014, and it was listed for hearing on 08.12.2014. However, the Trial Court has dismissed the application holding that, the petitioner has not followed the application after filing the same in the year 2011. The learned counsel has further submitted that, since the application has been filed as early as during the year 2011, the same was not numbered, which is not fault on the part of the party, and for that, the petitioner need not be penalised.

4. Per contra, the learned counsel appearing for respondent would submit that, the suit is listed for trial in the special list on 08.07.2011, on that day, the petitioner's counsel has deliberately absent, and an exparte decree has been passed. Even though the application was filed on 10.10.2011, they have not taken steps to get it numbered, and listed further. Further, they have deliberately kept it for more than three years, and that application was numbered only in the year 2014. Considering the above circumstances, the Trial Court has rightly dismissed the

application. It would only shows the lethargic attitude on the part of petitioner, and on that ground itself, that application is liable to be dismissed. In support of his contentions, the learned counsel has relied upon the judgment reported in **2015 (1) SCC 680**, in the case of **H.Dohil Constructions Co. Pvt. Ltd. vs. Nahar Exports Limited and another.**

5. I have heard the rival submissions of learned counsel appearing for petitioner as well as learned counsel appearing for respondent and perused the records carefully.

6. The petitioner has filed an application with the delay of 23 days to set aside the exparte decree dated 10.10.2011. The application was neither returned or numbered, and it was kept pending by the registry for more than three years. Only thereafter, at the instance of petitioner, it was numbered in the year 2014 and listed for hearing. The said fact was not disputed. However, the court below has dismissed the application holding that the application was filed on 10.10.2011, the petitioner did not follow the application till the year 2014, and it is the duty of counsel to take appropriation action to get it numbered. Hence, the petitioner is not interested in getting the order set aside.

7. Mr.J.Hudson Samuel, learned counsel appearing for petitioner submitted that, when the application has been filed in the year 2011, the party should be vigilant and it is the duty of petitioner to get it numbered immediately, but he has deliberately kept quite and he cannot seek equity in this Civil Revision Petition, However, considering the fact that, after filing the application, it was neither returned nor numbered, and it was kept pending in the Registry. It is true that, the counsel should have taken steps to get it numbered, and for that, the party should not be penalised. So far as the judgment relied upon by the respondent is concerned, it is a case of delay in representing the papers, and it was held that, the parties should be vigilant in representing the papers. But, in the instant case, the application was not returned, and it was kept in the registry, it may be due to oversight, the counsel failed to get it numbered in time, for which, the party should not be penalised.

8. Considering the fact that, the delay is only 23 days in filing the application, and also reasons stated for the delay are bonafide, I am inclined to set aside the fair and decreetal order dated 24.08.2015 passed in I.A. 18961 of 2014 in O.S. 4220 of

2010. However, considering the fact that, the suit is pending from the year 2010, the court below is directed to frame the issues, to proceed with the trial and dispose the suit within a period of six months from the date of receipt of the copy of this order. The parties are directed to cooperate with the trial without asking for any unnecessary adjournments.

9. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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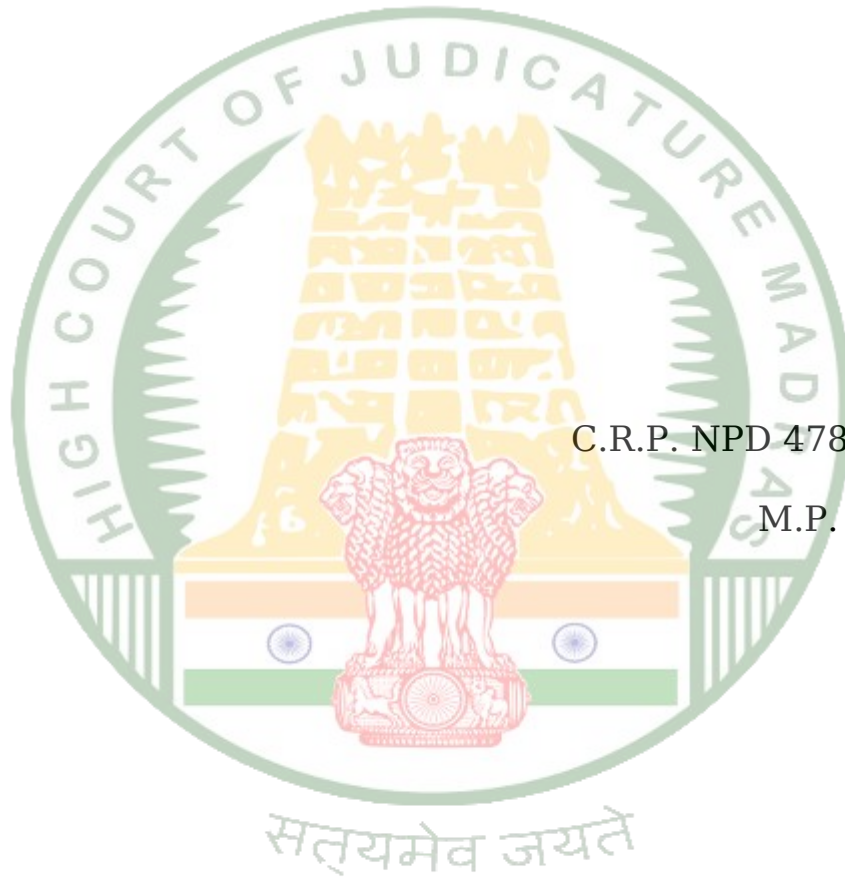
To

XVI Asst. Judge,
City Civil Court,
Chennai.

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V.BHARATHIDASAN,J.

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