IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). No. 4276 of 2013
and M.P. No. 1 of 2013

M/s. Hinduja Foundaries Ltd.,
Kathivakkam High Road,
Ennore, Chennai 600 057,
Rep. By its Managing Director,
Mr. V. Mahadevan ... Petitioner

Vs

Ennore Foundaries Employees,
Union Reg. No. 3372,
No.389, Thiruvottiyur High Road,
Thiruvottiyur, Chennai 600 019.
Rep. By its General Secretary,
Mr. Nandakumar ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 16.09.2013 made in I.A. No. 48 of 2013 in O.S. No. 76 of 2010 on the file of the District Munsif Court, Thiruvottiyur.

For Petitioner : Mr. P. Raghunathan
for Mr. T.S. Gopalan
For Respondent : No appearance

O R D E R

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 16.09.2013 made in I.A. No. 48 of 2013 in O.S. No. 76 of 2010 on the file of the District Munsif Court, Thiruvottiyur.

2. The petitioner is the plaintiff and respondent is the defendant in O.S. No. 76 of 2010 on the file of the District Munsif Court, Thiruvottiyur. The respondent is a Trade Union of the petitioner. The petitioner filed the said suit for permanent injunction, restraining the respondent Union, their office bearers, servants, agents, etc., from in any manner disrupting the factory operations and resorting to agitation activities within the premises and precincts thereof. Along with suit, the petitioner also filed I.A. No. 513 of 2010 for an interim injunction. Notice was served on the respondent. There was no representation for the respondent on the date of hearing. The learned

Judge**,** after hearing the counsel for the petitioner and on perusing the materials on record, granted interim injunction. The suit was posted for hearing on 11.11.2010. On that day also, there was no representation on behalf of the respondent. The respondent was set exparte on 30.09.2010 and exparte decree was passed on 11.11.2010.

3(a) The respondent filed I.A. No.48 of 2013 to condone the delay of 705 days in filing the petition to set aside the exparte decree. According to the respondent, deponent of the affidavit who is the General Secretary of the Union was suffering from viral fever and therefore, could not appear before the Court and prayed for condoning the delay of 705 days in filing the petition to set aside the exparte order.

3(b) The petitioner filed counter affidavit and contended that the respondent was aware of the suit when the notice was served in the petition filed for interim injunction. Subsequently, the order of interim injunction was served on the respondent and affixed in the notice board of the petitioner office and made known to the respondent. Hence, the reason given by the

respondent to condone the delay is not valid and prayed for dismissal of the petition.

3(c) The learned Judge, by the order dated 16.09.2013, allowed the I.A.No.48 of 2013, holding that the reason given by the respondent is acceptable.

4. Against the said order dated 16.09.2013 made in I.A. No.48 of 2013 in O.S. No. 76 of 2010, the petitioner has come out with the present Civil Revision Petition.

5. There was no representation for the respondent on 11.09.2020. To give an opportunity, the matter is adjourned today. Today also, there is no representation for the respondent.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. From the order of the learned Judge, it is seen that the respondent has sought for condonation of delay of 705 days on the ground that the

General Secretary of Trade Union was suffering from viral fever. There is no particulars as to from when the General Secretary was suffering from viral fever and when he recovered. The respondent has not filed any medical certificate to show that the General Secretary was suffering from viral fever for such a long time. It is well settled that the petition for condoning the delay must be considered liberally and length of delay is not a criteria. The Court must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the respondent has not given any valid and sufficient reason. The learned Judge, without considering the above facts, without any discussion about the reason for delay, allowed the Interlocutory Application, holding that the reason given by the respondent is acceptable. The said order of the learned Judge is erroneous. The learned Judge has not exercised the powers conferred on him properly and thereby committed irregularity and illegality. For the above reason, the order of the learned Judge dated 16.09.2013 made in I.A. No. 48 of 2013 is liable to be set aside and is hereby set aside.

8. In the result, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

15.09.2020

gsa
Index: Yes/No

To

The District Munsif,
Thiruvottiyur.

V.M.VELUMANI,J.

gsa

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