

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.Nos.272, 273, 274 and 275 of 2019

M/s. Tanfac Industries Limited,
Rep.by its Secretary
Mr.G.Balasubramaniam
Having its Regd.Office at No.L-1
Rear Block Prince Arcade
First Floor, 22-A Cathedral Road
Chennai 600086 .. Plaintiff/Respondent/Appellant
[in all four appeals]

vs

1. M/s. Orichem Limited,
Rep.by its Managing Director,
Qr.No.IV-B-1/2, Unit-1
Bhuvaneswar, Orissa .. 1st Defendant/
Respondent/Respondent
[in all four appeals]
2. M/s.Siddarth Chemicals Corporation,
Rep. by its Managing Partner
Mr.S. Kamalakar
at no.45-A, Barnaby Road, 1st Floor,
Kilpauk, Chennai 600010.
3. Mr.S. Kamalakar
at no.45-A, Barnaby Road, 1st Floor,
Kilpauk, Chennai 600010.
4. Mr.Ajit Sivan
at no.45-A, Barnaby Road,
1st Floor, Kilpauk,
Chennai 600010. ... 2 to 4
Defendants/Respondents/Respondents
[in all four appeals]

OSA No.272 of 2019:

Petition filed under Order 36 Rule 1 of Original Side Rules and Read with Clause 15 of Letters Patent to set aside fair and decreetal order made in Application No.1865 of 2019 in C.S.No.129/2002 dated 12.03.2019 and to pass such further or other orders.

OSA No.273, 274, 275 of 2019:

Petition filed under order 36 Rule of Original side rules and Read with Clause 15 of letter patent to set aside fair and decreetal order made in Application No.123 of 2019, 122/2019 1864/2019 in CS No.129/2002 dated 12.03.2019 and consequential order dated 20.03.2019, 23.01.2019.

For petitioner : Mr. Swamy M.C.

For respondent : Mr. G. Ravikumar [for R2 to R4]

COMMON JUDGMENT

[Judgment of the Court was delivered by M.M. SUNDRESH,J.]

These appeals have been filed against the orders passed by the learned Single Judge in condoning the delay in filing the applications to set aside the exparte decree, application to set aside the exparte decree and the application to recall the orders passed on the first two applications filed by the Respondents.

2. The Appellants in all these appeals filed a suit for recovery of money in C.S.129 of 2002 for the goods delivered. An exparte decree was passed on 22.06.2017 as the learned counsel for the defendants reported no instruction on the premise that that the papers have been taken away by them. Thereafter, application Nos.122, 123 of 2019 seeking to condone the delay of 504 days and to set aside the exparte decree have been filed. In those applications, unfortunately, the Appellant has not appeared through the counsel on the date of hearing. The learned Single Judge upon going through the averments made in the affidavit allowed the application on terms.

3. Thereafter, the Appellant filed Application No.1864 and 1865 of 2019 seeking to recall the orders passed in the earlier applications in Application Nos.122 and 123 of 2019. While reiterating the earlier order, the learned Single Judge enhanced

the amount payable by the Respondent from Rs.30,000/- to Rs.45,000/-. Aggrieved over the same, the present appeals have been filed. Needless to state that in the present appeals, the Orders passed in Application No.122 and 123 of 2019 and Application Nos.1864 and 1865 of 2019 have been challenged.

4. The learned counsel appearing for the Appellant would submit that the averments made in the affidavits filed in support of the Application Nos.122 and 123 of 2019 are not correct. The learned Single Judge has not considered the relevant materials in the right perspective. It was absent for only one hearing. There is an admission in the form of letter of the Second Respondent dated 17.12.1999. Thus, considering the above, the appeals will have to be allowed.

5. Learned counsel appearing for the Respondent would submit that the learned single Judge after going through the relevant materials found that the case has to be decided on merits. Though there was some mistake on the part of the Respondents, learned Single Judge allowed the applications by putting them on terms. In the subsequent Applications filed by the Appellant, the learned Single Judge reiterating the same view, enhanced the cost. Accordingly, the cost has also been sent within the time prescribed. The Respondent have valid grounds on merit. Thus, the Appeals will have to be dismissed.

6. Learned counsel appearing for the Appellant by way of reply submitted that it may take more time to dispose of the suit particularly when it has been transferred to the City Civil Court in view of the increase in the pecuniary jurisdiction.

7. We have heard the counsel appearing for the parties and perused the records.

8. Admittedly, the Respondents have been set exparte when the erstwhile counsel reported no instruction on 22.06.2017. But the procedure and the legal position would require a Court to issue notice to the parties before clamping a decree exparte on a prima facie consideration. This procedure has not been adopted. Secondly, the learned Single Judge went through the averments in the affidavit and allowed the applications filed by the Respondent on terms while finding some mistake on their part as well. We do not find any error in the procedure adopted by the learned Single Judge. Though the suit was filed in the year 2002, it was not taken up till the year 2017. Therefore, the

delay cannot be attributed against the Respondent alone. After all, the Respondents want to contest the matter on merits. The contention sought to be made on merit cannot be gone into at this point of time.

9. We are dealing with the order passed by the learned Single Judge in allowing the applications filed by the Respondent enabling them to contest the matter on merit. In such view of the matter, we are not inclined to interfere with the order passed. However, we find that the respondents have also played a part in delaying the proceedings. They have not even filed the written statement. Therefore, we are inclined to impose further cost, as prima facie it appears to be a case of non-payment of amount after supply of goods by the Plaintiff. In such a view of the matter we are inclined to increase the cost imposed by the learned Single Judge. While we are not interfering with the cost imposed by the learned Single Judge in respect of payment Rs.45,000/- to the Appellant, we are further directing the Respondent to pay another sum of Rs.20,000/- to the counsel for the appellant. Thus the Respondent is directed to comply with the same within two weeks from today.

10. Taking note of the fact that suit has been languishing for nearly two decades, we direct the jurisdictional court to dispose the same within a period six(6) months from the date of receipt of copy of this judgment. The Respondent shall file the written statement within a period of two(2) weeks from the date of receipt of copy of this order. Thereafter, the issues will have to be framed in another four(4) weeks. In the meanwhile, after filing the written statement, the Appellant can file Rejoinder if any, within the period of four(4) weeks. After the issues are framed, the matter should be taken up for trial and the respective parties are directed to cooperate for a speedy conclusion. In any case, the trial should be concluded within a further period three(3) months. After that, the suit will have to be disposed within the outer limit of six(6) months. Report will have to be filed by the court concerned after due compliance.

11. Registry is directed to transfer the papers to the concerned Court and take all measures to renumber it. After receiving the papers the said court will have to renumber the case and proceed further.

12. With the above direction, all the appeals are disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side, High Court, Madras-104.

+1cc to Mr.M.C.Swamy, Advocate Sr.11255

+4cc to Mr.K.Azhagu Raman, Advocate Sr.10325, 10326, 10328, 10327

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gmr[co]
srg 20/02/2020

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