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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	03.09.2021
DELIVERED ON	15.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.2141 of 2019

and

C.M.P(MD)No.11262 of 2019

H.S.Asraf Ali

...Petitioner/Petitioner/
Respondent

Vs.

1.Travel Agents Association of India,
Rep. By its President
R.Sunil Kumar

2. The Managing Committee,
Travel Agents Association of India,
Rep. By its Honorary Secretary General.

3.Travel Agents Association of India Southern Region,
Kalpatharu Tour & India Pvt. Ltd.,
Rep. By its Chair Person (formerly).

4.Travel Agents Association of India,
South Tamil Nadu Chapter,
Lakshmi Travel Agency Pvt. Ltd.,
Rep. By its Chairman (formerly). ...Respondents/Respondents/
Appellants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order, dated 06.07.2019 passed in I.A.No.62 of 2018 in C.M.A.No.27 of 2017 on the file of the Principal District Court, Tirchirappalli and reject the Appeal as not maintainable in the eye of law and allow this Civil Revision Petition.

For Petitioner :Mr.H.S.Mohammed Rafi
For R-2 :Mr.A.Arumugam

**ORDER**

This Civil Revision Petition has been filed to set aside the order, dated 06.07.2019 in I.A.No.62 of 2018 in C.M.A.No.27 of 2017 passed by the learned Principal District Judge, Trichirappalli and reject the appeal as not maintainable in the eye of law.

2. The revision petitioner had filed a interlocutory petition in I.A.No.62 of 2018 on the file of the Principal District Court at Trichirappalli. Earlier, the petitioner/plaintiff had filed a suit in O.S.No.324 of 2016 for declaring the show cause notices sent to the plaintiff by the defendants are one arbitrary, illegal and non est in law.

3.The petitioner/plaintiff has filed a I.A.No.313 of 2016 under Order 39 Rule 1 & 2 against the respondents/defendants for interim injunction as not to take any adverse action based on the show cause notices. After enquiry, it was allowed on 05.12.2016. Aggrieved by the said order, the respondents/defendants had filed an appeal in C.M.A.No.27 of 2017 and the said C.M.A. was numbered after condoning a delay of 25 days in representing the C.M.A.

4.The petitioner/plaintiff had filed I.A.No.62 of 2018 and stated that there was a delay of 249 days in representing the delay. But only 25 days of delay was condoned. Therefore, preliminary issues to be framed before disposing the CMA, he filed a petition in I.A.No.62 of 2018.

5.The revision petitioner also filed CPR(PD) (MD)No.1357 of 2018 and CMP (MD)No.5863 of 2018 to dismiss the CMA as the delay was not properly calculated. The said Civil Revision Petition was disposed on 12.09.2018 and direction was issued to the Principal District Judge, Tiruchirappalli, to dispose the I.A.No.62 of 2018 before hearing the argument in C.M.A.No.27 of 2017.

6.Therafter, I.A.No.62 of 2018 was heard and the same was dismissed on 06.07.2019 by the learned Principal District Judge, Trichirappalli, on merits. Aggrieved by the said order, this Civil Revision Petition is filed.

7. Heard Mr.H.S.Mohammed Rafi, learned counsel appearing for the petitioner and Mr.A.Arumugam, learned counsel appearing for R-2. Perused the material documents placed on record.

8.On perusal of records, I.A.No.62 of 2018 was filed for delay of condonation in presenting the C.M.A.No.27 of 2017. The main contention of the petitioner is that the respondents have represented the returned Appeal papers four times with condonation of delay applications, that they have not properly calculated the delayed days and they have mentioned incorrect and wrong number of delayed days and obtained orders from the Court, that they mislead the registry of this Court and that though the total number of



delayed days is more than 249 days, they have mentioned minimum days and obtained orders therefore. It is the further case of the petitioner that the Appeal was presented on 03.01.2017 and the same was returned for rectifications of defects on 05.01.2017, that the respondents have represented the returned papers on 29.04.2017 and again Appeal papers were returned on 05.06.2017, that the same was represented on 24.08.2017, that the registry had again returned the Appeal papers on 31.08.2017 and the same was represented on 25.10.2017 and that though there was a total delay of 249 days, they have obtained orders for least number of days. No doubt, on perusal of records, it is seen that the respondents have originally presented the Appeal on 03.01.2017 and the same was returned for some rectification of defects on 05.01.2017, that thereafter, the respondents represented the same on 29.04.2017 and the same was again returned on 05.06.2017, that the respondents represented the same on 24.08.2017 and the same was again returned on 31.08.2017 and that the respondents have represented again on 25.10.2017 and the Appeal was numbered on 26.10.2017.

9. The respondents/appellants in CMA have wrongly calculated the delayed days and obtained an order of condonation of delay. But, the appellate Court already condoned the delay and numbered the CMA. To condone the delay in representation is a matter between the Court and appellants. But the appellant has to explain the delay properly and correctly. Already CMA was numbered. Both the parties should cooperate to dispose the CMA.

10. I.A.No.62 of 2018 even if the Court found that the delay calculated is wrong in filing CMA. The respondents/appellants should pay some costs for wrongly calculated the days in filing CMA. But, CMA was already numbered. At this stage, this Court is not inclined to interfere with the order.

11. But the main relief in the suit is declaration of a show cause notice is invalid. The suit is of the 2016. Both parties should cooperate to dispose the suit itself.

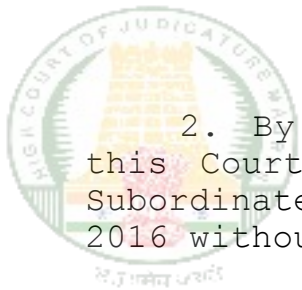
12. In view of the foregoing reasons, direction was issued to the II Additional Subordinate Judge, Trichy, to dispose the suit in O.S.No.324 of 2016 without prejudice the pendency of C.M.A.No.27 of 2017, within a period of two months, from the date of receipt of copy of the order, since main relief can be decided in the suit only.

13. With the above observations, this Civil Revision Petition stands closed. No Costs. Consequently, connected miscellaneous petition is closed.

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15.09.2021

This Petition listed before this Court on 21-09-2021 under the caption "FOR BEING MENTIONED" and in the presence of the counsels both side, this Court made the Following Order:

Today, this matter is listed before this Court under the caption "for being mentioned".
<https://hcservices.ecourts.gov.in/hcservices/>



2. By order, dated 15.09.2021 in C.R.P(MD) No.2141 of 2019, this Court granted two months time to the learned II Additional Subordinate Judge, Trichy, to dispose of the suit in O.S.No.324 of 2016 without prejudice to the pendency of C.M.A.No.27 of 2017.

3. If the learned II Additional Subordinate Judge, Trichy, wants any records or documents in C.M.A to dispose of the case he can very well get the same in the C.M.A and the main issue will be decided in the suit in O.S.No324 of 2016 finally.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The II Additional Subordinate Judge,
Trichy.

2.The Principal District Judge,
Trichirappalli.

+1CC to M/S A.Arumugam,Advocate(SR.No.29512)

+1CC to M/S H.S.Mohammed Rafi,Advocate(SR.No.29084)

C.R.P. (MD) .No.2141 of 2019

15.09.2021

MGJ(30.09.2021) 4P 5C