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C.R.P.(NPD).No.2093 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

C.R.P.(NPD).No. 2093 of 2016
and C.M.P.No.11809 of 2016

Gulbarga Electricity Supply Company Limited,
Opposite to Hotel Parivar,
Railway Station, Area Main Road,
Gulbarga.

... Petitioner

Vs

1.Kanchan Devi
Kanchan Enterprises,
No.10, NSC Bose Road
Chennai 600 079.

2.M/s.Bhagyanagar Solvent Extracts Pvt. Ltd.,
No.51, Moosa Street,
T.Nagar, Chennai 600 001.

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the judgment and order dated 26.02.2016 E.A.No.5576 of 2015 in E.P.No.583 of 2015 in O.S.No.9416 of 2006 on the file of the learned IX Assistant City Civil Judge, Chennai.

For Petitioner : Ms.S.Indumathi Ravi

For Respondents : Mr.T.S.Kandhakumar for R1

No appearance for R2

ORDER



This Civil Revision petition has been filed challenging the order passed by the executing Court, whereunder the petitioner was directed to deposit the claim amount on or before 28.03.2016. The said application has been filed to condone the delay of 35 days in setting aside the ex-parte order dated 03.06.2015 in E.P.No.583 of 2015.

2. The facts leading to the present revision is as follows:-

2.1 The 1st defendant herein had filed a suit against the 2nd respondent and three others for a recovery of a sum of Rs.32,000/- (Rupees Thirty Two Thousand only) together with interest at the rate of 1.30% per month which was quantified on Rs.23,750/- (Rupees Twenty Three Thousand Seven Hundred and Fifty Only) in which the judgment and decree was passed in O.S.No.9416 of 2006 on 30.03.2007. Pursuant to the said decree, the 1st respondent/ decree holder filed an execution petition in E.P.No.583 of 2015, wherein, it was also mentioned that the decree has to be executed against the petitioner and has stated that in I.A.No.22213 of 2016 a garnishee order has been passed which had been made absolute on 28.09.2012 in which the amount was directed to be deposited in Court by the garnishee. A notice of the above execution petition was served upon the petitioner on 26.05.2015 for hearing on 03.06.2015 on which date there was no representation on the side of the petitioner and hence, an ex-parte order was passed. Seeking to set aside the ex-



parte order, the petitioner had filed an application along with an application to condone the delay. In the application to set aside the ex-parte order, the averments is as follows:

“I submit that Court summons was served on the petitioner on 26.05.2015. The petitioner immediately contacted their counsel at Chennai and appraised about the matter. On verifying the Court records we were informed by our counsel at Chennai that the next date of hearing was on 03.06.2015. The duly signed vakalath could be despatched only on 04.06.2015 as the Authorised signatory was not in town at that point of time. Since the vakalath reached our counsel at Chennai on the evening of 03.06.2015, the same could not be filed into Court on the said date and as such the petitioner was set ex-parte.”

2.2 However, in an application to condone the delay, the reasons assigned is as follows:-

“ I submit that the vakalath and affidavit to set aside the order dated 03.06.2015 sent by the petitioner was mixed up with some other papers and could not be traced out. Hence, a fresh vakalath and affidavit was forwarded to the petitioner for signature and notarization. The signed papers reached us only during the first week of August, 2015 and the same was filed on 06.08.2015. Hence there is a delay of 35 days in filing the set aside petition in the above E.P.No.583 of 2015.”

2.3 The said application was vehemently opposed by the 1st respondent



on the following grounds:-

(a) The petitioner having received notice and had known the date of hearing, ought to have filed the vakalath on or before 03.06.2015.

(b) If the case of the petitioner is taken as submitted, their advocate could have entered appearance and under took to file the vakalath.

(c) An application in I.A.No.22213 of 2006 adding the petitioner as garnishee was filed and in the same there has been an order directing the garnishee to deposit the amount has been made under Order 38 Rule 5 of C.P.C., which was also made absolute by order dated 28.09.2012.

3. It was further argued that the garnishee/ petitioner has not been diligent in approaching the Court and hence, sought dismissal of the application to condone the delay. The Court below, after hearing the parties had allowed the petition to condone the delay on a condition that the petitioner/ garnishee deposit the claim amount in the execution petition on or before 28.03.2016.

4. Heard the arguments of the learned counsel for the petitioner and the learned counsel appearing on behalf of the 1st respondent and notice to the 2nd defendant has returned unclaimed.

5. During the course of the arguments, it has been brought to the notice of this Court that the 2nd respondent has filed a winding up petition and it was the case of the petitioner that the amount could not be recovered by the



petitioner from the 2nd respondent and that the petitioner does not hold any amount belonging to the 2nd respondent for it to pay the amount in the execution proceedings.

6. It was also the case of the petitioner that in a proceedings before Karnataka Electricity Commission, Bengaluru dated 12.12.2017, an order has been passed directing the 2nd respondent herein to pay various amount to the petitioner who had suffered various garnishee orders in which the 2nd respondent had suffered a decree. When a specific question was put to the learned counsel for the petitioner as to whether the amount under the decree in the instant case is also covered under the said proceedings, it was answered in the negative. It is the specific case of the petitioner that the petitioner does not hold any amount on behalf of the 2nd respondent for it to be a garnishee.

7. It is not disputed by the petitioner that a garnishee order had been passed against it in I.A.No.22213 of 2006 which it had been made absolute by order dated 28.09.2012. It is not the case of the petitioner that it had no knowledge of any such order. In spite of the specific stand taken by the 1st respondent in its counter before the executing Court, there is no reply by the petitioner repudiating the averments made in the counter. Further, the reasons assigned in the application to set aside the ex-parte order and the reasons



assigned in the application to condone the delay also are not complimenting each other. Even though in application to condone the delay, they had claimed that an application was filed on 06.08.2015, the same had been attested by Notary on 07.11.2015 which would indicate that even though an application to set aside the ex-parte order was filed on 06.08.2015 an application to condone the delay had been filed only after 07.11.2015. Even though the petitioner were aware of the hearing on 03.06.2015, they had taken their own time and had dispatched the vakalath only on 04.06.2015. They had also not taken care to appear in person or through an advocate on 03.06.2015, on which date they could have under taken to file a vakalath. They were also not diligent in immediately approaching the Court to set aside the ex-parte decree and took their sweet time and had filed the application only on 06.08.2015 with an affidavit which it had been attested only on 22.07.2015.

8. It is not their case that they were not aware of the delay in filing the application to set aside the ex-parte order but the same has been filed without an application to condone the delay which seems to have been filed later in the month of November, 2015 as it could be seen that the affidavit has been notarized on 07.11.2015.

9. As stated supra, they had also suffered a garnishee order which they



had allowed to become final without taking any course of action against the same. The conduct of the petitioner would show they have not been diligent in prosecuting the case. The executing Court had only imposed a condition that the amount be deposited in the Court for condoning the delay in setting aside the ex-parte order.

10. I find no reasons to interfere with the same as no satisfying reasons have been put forth by the petitioner and hence this Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.As the time stipulated by the Court to deposit the amount is long over, this Court directs the petitioner to deposit the amount within a period of two weeks from the date of the receipt of a copy of this order and the amount so deposited shall not be disbursed to the respondent till the execution petition is finally disposed of and the same deposited is directed be kept in an interest bearing deposit to the credit of instant E.P.No.583 of 2015.

17.06.2022

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To

The IX Assistant City Civil Judge, Chennai.



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