



C.M.A.No.1314 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM :

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.No.1314 of 2022
and C.M.P.No.9540 of 2022**

M/s.Parle Agro Private Limited
Registered Office
Western Express Highway
Chakkala, Sahar Road,
Parsiwada, Andheri East,
Mumbai – 400 099.

.. Appellant

Vs.

1.M/s.Vishuda Enterprises
represented by its Partner
Kris Rohan Shetty
Son of Banu Prathap Shetty
Door No.B1, First Floor,
Rainbow Manor Apartment,
Trichy Road, Coimbatore – 641 018.

2.M/s.EV Water Products Private Limited,
Registered Office at No.E2,
KTVR Apartments,
2nd Street, Bharathi Colony,



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Peelamedu, Coimbatore – 4.

.. Respondents

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Appeal filed under Section 13 (1A) of the Commercial Courts Act, 2015 read with Order 43 Rule 1(a) of the Code of Civil Procedure against the impugned order dated 30.09.2021 made in I.A.No.2 of 2021 in C.O.S.No.15 of 2021 passed by the Principal District Court, Coimbatore.

For Appellant : Mr.M.Narendran
for M/s.King and Partridge

J U D G M E N T

(JUDGMENT WAS MADE BY M.DURAI SWAMY, J.)

Challenging the order passed in I.A.No.2 of 2021 in C.O.S.No.15 of 2021 on the file of the Principal District Court, Coimbatore, the 2nd respondent/Garnishee has filed the above appeal.

2.The 1st respondent/plaintiff filed the suit in C.O.S.No.15 of 2021 on the file of the Principal District Court, Coimbatore to direct the defendant to pay the plaintiff a sum of Rs.46,97,181/- with interest of Rs.31,42,338/- @ 12% per annum from the date of suit till the date of realisation. In the said suit, the plaintiff took out an application in I.A.No.2 of 2021 under Order 38 Rule 5 & the Code of Civil Procedure to direct the 2nd respondent herein



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to furnish security for the suit claim and costs in a sum of Rs.50 lakhs, failing which to order attachment before judgment of the sum of Rs.50 lakhs available with the appellant herein by a prohibitory order by directing the appellant/garnishee not to refund it to the 2nd respondent and to deposit the same before the trial Court to satisfy the suit claim from and out of the security deposit made by the 2nd respondent to the appellant.

3.Inspite of receiving notices from the trial Court, the appellant and the 2nd respondent remained exparte and they were set exparte on 11.03.2021. Thereafter, on 30.04.2021, the trial Court directed the respondent to furnish security for the sum of Rs.50 lakhs on or before 30.06.2021 and posted the matter to 30.06.2021. On 30.06.2021, due to Covid-19, the trial Court adjourned the application to 04.08.2021. On 04.08.2021, the 1st respondent filed a notice batta under Section 6A and the same was served on the appellant and the 2nd respondent to appear before the Court on 03.09.2021. On 03.09.2021 also, the appellant and the 2nd respondent remained exparte. Since the appellant and the 2nd respondent chose not to appear before the trial Court inspite of receiving notices from the trial Court, the trial Court heard the submissions of the 1st



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respondent/plaintiff on 06.09.2021 and being satisfied with the averments stated in the affidavit filed in support of the application and the submissions made by the learned counsel for the 1st respondent/plaintiff, allowed the application by attaching the petition mentioned amount of sum of Rs.50 lakhs, which is available with the appellant by way of a prohibitory order. The said order was passed on 30.09.2021. Challenging this order, the Garnishee filed the above appeal on 27.04.2022.

4.It is pertinent to note that though the appellant received the copy of the order as early as on 16.11.2021, they chose to file the appeal only on 27.04.2022. The conduct of the appellant and the 2nd respondent would establish that they were not diligently contesting the matter and the intention is only to drag on the matter for an indefinite period. That apart, the 1st respondent has established the necessity for passing an order of attachment before the judgment and considering the same, the trial Court has passed the order on merits. We do not find any error or irregularity in the order passed by the trial Court. The Civil Miscellaneous Appeal is devoid of merits and the same is dismissed. No costs.



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5.The Principal District Judge, Coimbatore shall decide the suit in C.O.S.No.15 of 2021 as expeditiously as possible. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
va

[M.D., J.] [S.M., J.]
22.06.2022



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**M.DURAIWAMY, J.
and
SUNDER MOHAN, J.**

va

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M.DURAIWAMY, J.

and

SUNDER MOHAN, J

(Order of the Court made by M.DURAIWAMY,J.)

At the instance of Mr.M.Narendran, learned counsel appearing for the appellant, the matter has been listed today under the caption “for being mentioned”.

2. This Court, by order dated 22.06.2022, dismissed the Civil Miscellaneous Appeal finding that no error or irregularity in the order passed by the Trial Court. Further, this Court also directed the Principal District Judge, Coimbatore, to dispose of the suit as expeditiously as possible.

3. The learned counsel appearing for the petitioner submitted that the Trial Court may be directed to dispose of the suit uninfluenced by the observations made in the Civil Miscellaneous Appeal.



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4. In view of the submissions made by the learned counsel appearing for the appellant, the existing paragraph No.5 may be deleted and the following may be incorporated as paragraph No.5.

“5.The Principal District Judge, Coimbatore shall decide the suit in C.O.S.No.15 of 2021 on merits and in accordance with law without being influenced by any of the observation made in this Civil Miscellaneous Appeal. as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed.”

In other aspects, the order dated 22.06.2022 passed in the above Civil Miscellaneous Appeal shall remain unaltered.

5. The Registry is directed to carry out the amendment and issue fresh copy of the order to the learned counsel on either side.

[M.D., J.] [S.M., J.]
28.06.2022

Rj



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M. DURAISWAMY, J.

and

SUNDER MOHAN, J.

Rj

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