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C.R.P. (PD) No.2298 of 2022
and C.M.P. No.11779 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.2298 of 2022
and C.M.P. No.11779 of 2022

- 1.M/s.Mehala Corona Textiles Pvt. Ltd.,
Rep. by its Director C.Subramaniam,
Having Office at No.36, Harvey Road,
Tiruppur - 641 602.
- 2.M/s.Mehala & Company,
A Sole Proprietor concern,
Rep. by its Sole Proprietor C.Subramaniam,
Having Office at No.36, Harvey Road,
Tiruppur - 641 602.
- 3.M/s.Sunrise Knitting Mills,
A Partnership Firm,
Rep. by C.Subramaniam
Power Agent for it's Partner M.Dooraisami
Having Office at Kulivayal Thottam,
Kullegoundenpudhur, Andipalayam Post,
Tiruppur - 641 687.
- 4.M/s.Dharani Textiles Pvt.Ltd.,
(Formerly known as Dharani Wind Energy Pvt. Ltd.)
Rep. by its Director C.Subramaniam,
Having Office at No.36, Harvey Road,
Tiruppur - 641 602. ...

Petitioners /
Plaintiffs

versus



RRB Energy Limited
Rep. by its Authorized Signatory T.Sundaram,
Having its Registered Office at
G.A.-1/B-1 Extension,
Mohan Cooperative Industrial Estate,
Mathura Road, New Delhi - 110 044.
And also having Office at Old No.121/2,
New No.275, TTK Road, Alwarpet,
Chennai - 600 018. ...

Respondent /
Defendant

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 01.04.2022 made in I.A.No.80 of 2022 in O.S.No.131 of 2011 on the file of the learned II Additional District Judge, Tiruppur and set aside the same.

For Petitioners	: Mr.G.Rajagopalan Senior Counsel for M/s.Niranjana Rajagopalan
For Respondent / Caveator	: Mr.V.Lakshmi Narayanan for Mr.K.R.Harin

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned II Additional District Judge, Tiruppur dated 01.04.2022 made in I.A.No.80 of 2022 in O.S.No.131 of 2011.



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2. The revision petitioners are the plaintiffs, who have filed the suit in O.S.No.131 of 2011 against the defendant for recovery of damages; the defendant was set *ex parte* and *ex parte* decree was passed on 04.06.2014; the defendant filed a petition under Order 9 Rule 13 CPC to set aside *ex parte* decree on 03.07.2014 and that was entered into the records of the Court *vide* CFR.No.2260 of 2014; thereafter, the petition was not available for numbering; the defendant filed a petition in I.A.No.80 of 2022 seeking leave of the Court to reconstruct the lost petition and that was allowed. Aggrieved over that, the petitioners have filed the present Civil Revision Petition.

3. The learned Senior Counsel for the revision petitioners submitted that even if it is true that the respondent has preferred a petition to set aside the *ex parte* decree on 03.07.2014 he ought to have followed it and got it numbered; for extraneous reasons if that is lost in the Court, he should have approached the Court for taking necessary action; since the respondent was kept quite for nearly 8 years that led to the subsequent developments; in fact the execution proceedings were initiated; only subsequent to the orders



WEB COPY

passed by the High Court of Delhi, he came and file this petition for reconstruction; even if it is taken for the sake of arguments that the mistake is on the part of the Court only, the petitioner ought to have filed the petition within 3 years as prescribed under Section 137 of the Limitation Act.

4. The learned counsel for the respondent submitted that the respondent did not abuse the process of law at any point of time; he has filed the petition to set aside the *ex parte* decree well within time and the Court records would also show that his petition was received in the Court; he has been filing memos frequently by stating that his petition has not been taken on file; the learned trial Judge has taken note of those memos and especially the endorsements made by the learned counsel as well and recorded a finding that the mistake was only on the part of the Court. The learned counsel for the respondent also cited the judgment of this Court held in ***S.S.NEELAMEGAM vs. R.JEYAPAL*** reported in ***2011 (5) CTC 537*** in support of his contention that for the mistake of the Court the party should not be allowed to suffer and such situations are appropriate where the Court has to order for reconstruction of records.



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5. On perusal of records, it is seen that the suit in O.S.No.131 of 2011 was decreed and *ex parte* decree was passed on 04.06.2014. No doubt the respondent has filed petition to set aside the *ex parte* decree on 03.07.2014 and that was received in the Court. The said fact was evidenced by the CFR Number given by the Court in CFR.No.2260 of 2014. Thereafter for the reasons known to the persons, who were knowing the affairs of the petition was not taken on file and the Court records does not show that the petition had returned at any point of time. However, it is seen that the respondent has been filing repeated memos by bringing it to the knowledge of the Court that his petition has not been taken on file. In fact, while receiving the repeated memos, the Court ought to have taken steps to reconstruct the records and that could have avoid the delay.

6. In the meanwhile, the execution proceedings seems to have been initiated. Since the matter had gone serious the petitioner once again approached the Court by way of filing petition to reconstruct the records. No doubt, the petition filed to seek leave of the Court to reconstruct the records under Order 9 Rule 13 C.P.C. filed nearly 8 years from the date of presenting the lost petition. Under such circumstances, it cannot be said



that the entitlement of the respondent to file a petition for reconstruction is barred by limitation.

7. The learned trial Judge has rightly accepted the mistake on the part of the Court and the genuineness of the memos filed by the learned counsel for the respondent and allowed the reconstruction of the lost petition in the interest of justice. Now, it is reliably learnt that the petition under Order 9 Rule 13 C.P.C. also pending and it was posted 'for orders' on 29.07.2022. On this aspect, it is relevant to extract the portion of the judgment of this Court held in ***S.S.NEELAMEGAM vs. R.JEYAPAL*** reported in ***2011 (5) CTC 537*** whereas it is held as under;

“15. It is to be noted that for the mistake of either the Court or the Court Staff, no litigant should suffer or be penalised (when there is no fault attributed to him). Admittedly, every Court of Law has inherent powers to reconstruct its record in certain cases, which is universally a recognised one. The exercise of inherent powers must be employed by a Court of Law on sound judicial discretion. When technical considerations and deliverance of substantial justice are pitted against each other, then cause of deliverance of substantial justice is to be preferred overwriting technicalities. In short, the Court of Law must adopt a pragmatic, meaningful, practical and rational commonsense approach while dealing with the Application to reconstruct the Restoration Application filed by a



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litigant and that too where there is an entry in 19th Register with a specific principle for vouchsafing the filing of the same.”

8. The facts of the case are squarely applicable to the situation that has arisen in the case in hand and the learned trial Judge has rightly dealt the issue and allowed the petition. Hence, I find no factual and legal infirmity in the order passed by the learned II Additional District Judge, Tiruppur.

9. Accordingly, this Civil Revision Petition is dismissed and the order dated 01.04.2022 passed by the learned II Additional District Judge, Tiruppur in I.A.No.80 of 2022 in O.S.No.131 of 2011 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.07.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

The II Additional District Judge,
Tiruppur.



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R.N.MANJULA, J.

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