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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A. (CAD) No.151 of 2021

Tamilnadu Industrial Investment Corporation,
rep. by its Branch Manager,
Special Recovery Branch,
No.692, Anna Salai, Nandanam,
Chennai - 600 035,
Now at HIG No.42,43, MGR Salai,
Maraimalainagar,
Chenglepet District.

.. Appellant

Vs

1. M/s.Drill Well Rigs,
rep. by its Proprietor,
Annam - H-965, C3 24th Street,
Thirumoolar Colony,
Annanagar West,
Chennai - 600 040.

2. S.Sreedaran
3. K.Saroja

.. Respondents

Prayer: Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 13 of the Commercial Courts Act, 2015 against the order dated 29.01.2021 in O.P.No.646 of 2012.

Prayer in O.P.No.646 of 2012: This Petition filed under Sec 31(a), 31(aa) and 32 of the State Financial Corporation's Act, 1951, seeking to determine the liability and direct the respondents 2 to 3 herein to pay jointly and severally a sum of Rs.47,36,737/- (Rupees Forty Seven Lakhs and Thirty Six Thousand and Seven Hundred Thirty Seven Only) to the petitioner Corporation with interest at the rate of 19.25% p.a. from the date of the petition to till the date of realization in full.



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For the Appellant

: Mr.M.J.Jaseem Mohamed

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

By this appeal, a challenge was made to the order dated 29.01.2021 passed in O.P.No.646 of 2012, by which the Original Petition preferred by the appellant Corporation for recovery of a sum of Rs.47,36,737/- was dismissed.

2. The facts on record show that the appellant Corporation preferred the Original Petition in the year 2012 for recovery of a sum of Rs.47,36,737/- with interest from the respondents. The court issued notice, but the notice was not served on the respondents in a period of nine years. The appellant Corporation was required to take steps for service of notice on the respondents as the notice sent to the respondents before filing the Original Petition was returned as unserved. The appellant was required to find out the correct addresses of the respondents for service of notice. No effort was made for years together and therefore, the court passed an order in March, 2020 for paper publication of notice. The direction aforesaid was also not carried out by the appellant Corporation and, therefore, the Original Petition was dismissed after giving nine years to the appellant for service of notice on the respondents.

3. The present appeal challenging the order dated 29.1.2021 has been filed without assigning any reason and justifying the default for not giving the fresh and correct addresses of the respondents and service of the notice. Thus, appeal has been preferred by the appellant Corporation for the sake of it, otherwise delay in taking steps by the appellant for service of notice is writ large.

4. Learned counsel for the appellant Corporation submits that the paper publication could not be effected on account of the default of the advocate without realizing that the paper publication of notice is to be made by the Corporation by taking proper steps and not by the advocate appearing on behalf of the Corporation.

5. We deprecate the practice of the appellant Corporation to take such defence. Rather, we do not find any default on the part of the counsel who appeared on behalf of the Corporation, because even while filing the appeal, the Corporation failed to find out the addresses of the respondents as the notice to them returned unserved. Despite of serious default in taking steps



for service of notice, no action was taken against the officer. The appeal was preferred without assigning a justifiable ground for challenge of the order.

6. The Managing Director of the appellant Corporation was called for the reason aforesaid because despite a serious default on the part of the officers concerned in getting the notice served by securing fresh and correct addresses of the respondents and even failure to get paper publication of notice, no action was taken against the defaulting officer in a case involving more than Rs.47 lakh. The Managing Director was asked as to why the action was not taken against the defaulting officer when the default is apparent on the face of record in not carrying out the direction for service of notice and, that too, even by paper publication. The total period for this is of more than nine years.

7. At this stage, learned counsel for the appellant Corporation informed that the file of the case was lying with the advocate and whenever the officer of the appellant Corporation visited the office of the advocate, it was found locked. The statement aforesaid has been made without realizing that the appellant Corporation need to maintain a parallel file of the court case and if it has not been maintained, we can realize how the appellant Corporation is conducting the court cases. The default attributed to the advocate was made orally as there is no pleading in the appeal in that regard. Thus, we do not find any ground so as to interfere with the order impugned in the appeal. As the appellant Corporation failed to take steps for service of notice on the respondents for a period of nine years and even failed to carry out the direction for paper publication, in our considered opinion, the learned Single Judge has rightly dismissed the petition.

8. In view of the above, we dismiss the appeal, however, with liberty to the appellant Corporation to take action against the defaulting officer who failed to take steps for getting fresh and correct addresses of the respondents and service of notice. It is even for their failure to get paper publication. The appellant Corporation, if they wish, may take action and recover the entire amount from the defaulting officer. There will be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar



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The Branch Manager,
Tamilnadu Industrial Investment Corporation,
Special Recovery Branch,
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Now at HIG No.42,43, MGR Salai,
Maraimalainagar, Chenglepet District.

Copy to:-

The Sub Assistant Registrar
Original Side
High Court, Madras.

O.S.A. (CAD) No.151 of 2021

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NSK 21/01/2022