



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 1162 of 2017

And

C.M.P.No. 5542 of 2017

M/s. Agarwal Foundries Pvt. Limited.,
Rep. by its Managing Director
Rama Towers, 5-4-83, TSK Chambers,
Opp: Ranigunj Bus Depot
Secunderabad.

... Petitioner/Respondent/Plaintiff

Vs

M/s. Suryadev Alloys and Power Limited.,
Nos. 2 & 4 Golden Enclave, 4th Floor,
184, Poonamallee High Road, Kilpauk,
Chennai – 600 010.

...Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the orders passed in I.A.No. 1996 of 2016 in O.S.No. 214 of 2012, dated 31.07.2017 on the file of the I Additional Chief Judge, City Civil Court, at Secunderabad.

For Petitioner : Mr. Jayesh B.Dolia
for M/s. Ayar and Dolia



For Respondent : Mr. J.Deliban

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ORDER

The Civil Revision Petition has been filed against E.A.Sr.No. 48964 of 2016 in C.R.P.No. 3145 of 2015 in O.S.No. 214 of 2012. The said execution petition is now pending on the file of IX Assistant Civil Court, Chennai. The Judgment Debtor / defendant in O.S.No. 214 of 2012 is the revision petitioner.

2. O.S.No. 214 of 2012 had been filed by the respondent before the I Additional Chief Judge, City Civil Court at Secunderabad, seeking recovery of Rs.11,94,360/- together with interest and costs.

3. A Judgment and Decree was passed on 11.08.2014. Thereafter, the decree was transmitted to the Civil Court, Chennai, for execution. On transmission, the respondent filed E.P.No. 3145 of 2015 to put the ex-parte decree into execution.

4. In the meanwhile, the revision petitioner/defendant filed an application in I.A.No. 1996 of 2016 to condone the delay of 835 days in filing application to set aside the ex-parte decree. That delay was



condoned by an order dated 31.07.2017 by the I Additional Chief Judge, City Civil Court at Secunderabad.

5. Questioning that order, the respondent herein had filed C.R.P.No. 5872 of 2017 before the High Court of Telungana and the said Revision Petition is pending. Since the delay had been condoned, the revision petitioner, filed E.A.S.R.No. 48964 of 2016 before the IX Assistant City Civil Court, where E.P.No. 3145 of 2015 is pending under Order 21 Rule 26 of the Code of the Civil Procedure, seeking stay of further proceedings of E.P.No. 3145 of 2015. The said application was not even numbered by the IX Assistant City Civil Court, Chennai and rejected, necessitating filing of the present Civil Revision Petition.

6. It is the grievance of the learned counsel for the respondent that though the delay of 835 days had been condoned, the revision petitioner had not taken any steps to prosecute the Interlocutory Application to actually set aside the ex-parte decree. It is contended that there is no stay in C.R.P.No. 5872 of 2017 and therefore, there is no impediment in the I Additional Chief Judge, City Civil Court, Secunderabad in proceeding further with to application to set aside the exparte decree. It is further



contended that as on date, the exparte decree stands and the decree states that the revision petitioner is under obligation to pay the amount as stated in the suit in O.S.No. 214 of 2012.

7. But I would rather that it would be more prudent to await orders of C.R.P.No. 5872 of 2017 pending before the High Court at Telangana. The order in I.A.No. 1996 of 2016 might either be affirmed or set aside. If the order is affirmed then the next logical step would be for the revision petitioner to move the application to set aside the exparte decree. If the order is set aside, then the respondent herein will always be at liberty to put that exparte decree in execution.

8. E.P.No. 3145 of 2015 need not be kept any further on the file of IX Assistant City Civil Court. Provision is available in the statute for the respondent herein, to file a fresh execution petition whenever the cause arises, depending on the nature of the order passed in C.R.P.No. 5872 of 2017.

9. I would rather that the respondent herein, if they are so advised bring that fact to the notice of the IX Assistant City Civil Court, Chennai,



seeking permission to withdraw E.P.No. 3145 of 20145 and at the same time, seek liberty to file fresh execution petition whenever the cause arise.

10. It is informed that a sum of Rs.2.50 lakhs has been deposited by the revision petitioner and is now pending on the credit of E.P.No. 3145 of 2015. That deposit may remain and await further orders in C.R.P.No. 5872 of 2017.

11. The respondent herein may take a conscious decision to keep the E.P.No. 3145 of 2015 pending or as aforesaid seek to withdraw it with liberty to file fresh execution petition. The options alone are stated by this Court.

12. There cannot be any coercive action initiated pursuant to E.P.No. 3145 of 2015 and let the IX Assistant City Civil Court, Chennai await orders in C.R.P.No. 5872 of 2017 before proceeding further.

13. With the above observation, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2022

vsg

Index: Yes/No

Speaking order / Non speaking order



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C.V.KARTHIKEYAN, J.

Vsg

To:

1. I Additional Chief Judge, City Civil Court,
Secunderabad.
- 2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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