



WEB COPY



C.R.P.No.2116 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2116 of 2019
and
C.M.P.No.13671 of 2019

1.M.A.Elangovan (died)
2.Kannaki Devi Elangovan
3.Umamaheswari Elangovan
4.Kalaimagal Elangovan
5.E.Stalin Kumar

...Petitioners

Vs.

S.S.Perumal

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decree order dated 06.09.2018 passed in I.A.No.397 of 2016 in I.A.No.1092 of 2010 in un-numbered Arbitration O.P.No. by the learned Principal District Judge, Tiruvallur.

For Petitioners : Mr.S.Nagarajan

For Respondent : Ms.A.L.Ganthimathi
Senior Counsel for
Mr.A.R.Karthik Lakshmanan



C.R.P.No.2116 of 2019

ORDER

This Civil Revision Petition has been preferred against the dismissal of the petition to condone the delay of 68 days in filing the application to set aside the exparte order in I.A.No.1092 of 2010 in Un-numbered Arbitration O.P.Sr.No.5572 of 2010.

2.The petitioner before me is the 1st respondent in the proceedings. The application under Section 9 was filed in I.A.No.1092 of 2010, which relates to a partnership firm under the name and style, M/s.VSR Metal Forgings Limited. The Arbitration application was filed on 24.09.2010. A counter was presented on 23.06.2011. After filing of the counter, orders were passed four years thereafter, on 17.11.2015. It was an exparte order as it is seen from paragraph 4 of the order. To set aside the exparte order, an application was filed under Section 5 of the Limitation Act to condone the delay of 68 days in filing the said petition. The reasons for filing the petition with a delay is that the 1st respondent was not in the country during the relevant point of time. The said application was dismissed, which has been challenged before me.

3.I have heard Mr.S.Nagarajan, learned counsel appearing for the



C.R.P.No.2116 of 2019

petitioner and Ms.A.L.Ganthimathi, learned Senior Counsel for the respondent and carefully perused the records.

4.It is not in dispute that the application was moved under Section 9 for interim protection of the property pending appointment of an Arbitrator. Both sides agreed, till date an Arbitrator has not been appointed for the purpose of dissolution of the partnership. The Arbitrator's award which was relied upon by the civil revision petitioner is an award under which the 1st respondent was directed to pay a sum of Rs.34,00,000/-. It is not known whether that award has been put into execution.

5.Be that as it may, the fact that a person was not in the country during the relevant time is a sufficient cause for the purpose of condoning the delay. Apart from that, a reading of the order dated 17.11.2015 shows, no reason has been adduced as to why the award passed by Mr.Ravikumar has not been taken into consideration at the time of passing the order. If Mr.Ravikumar had already come to a finding that Mr.S.S.Perumal is liable to pay Rs.34,00,000/- to the partnership firm, appointing him as a receiver



C.R.P.No.2116 of 2019

might not be in the interests of justice.

WEB COPY

6.Further more, having filed an application under Section 9, the petitioner ought to have shown urgency in getting an Arbitrator appointed in terms of Section 11 of the Arbitration and Conciliation Act. As already stated, both sides agreed that till date Arbitrator has not been appointed to resolve the disputes with respect to M/s.VSR Metal Forgings Limited.

7.Pending the revision, I called for a report from the learned Principal District Judge, Tiruvallur as to whether Thiru.S.S.Perumal, the receiver has been filing his reports before the Court. The learned Principal District Judge has sent a report that she had verified the deposit and investment register and had found that no deposit has been made by the receiver. She has further stated that after an interim report filed on 13.01.2016, no report has been filed by the receiver. In other words, the receiver has not acted in terms of his appointment. There is no record to show that he has initiated proceedings for eviction of the tenants through substantial amounts are being paid towards rents. Hence, I take this into



C.R.P.No.2116 of 2019

consideration while passing the order.

WEB COPY

8.I am convinced with the reasons given in I.A.No.397 of 2016.

The order dismissing the same on 06.09.2018 is set aside. The learned Principal District Judge is requested to take up the application to set aside the exparte order and set aside the same and pass fresh orders in Arbitration Application No.1092 of 2010 after hearing both sides. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. The findings given in the revision are only *prima facie* and they shall not bind the Court at the time of final disposal of Arbitration Application No.1092 of 2010.

9.In view of the same, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

kkn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No



WEB COPY



C.R.P.No.2116 of 2019

V.LAKSHMINARAYANAN, J.

KKN

To:-

The Principal District Court,
Tiruvallur.

C.R.P.No.2116 of 2019
and
C.M.P.No.13671 of 2019

30.08.2023