



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	26.07.2024
PRONOUNCED ON	02.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

Cont.P.No.1937 of 2019
and
A.Nos.2021 and 2022 of 2020
in
C.S.No.138 of 2012

Cause title in Cont.P.No.1937 of 2019:

M/s.Shriram Composite Private Limited,
("Formerly known as M/s. Shriram
Angerlehner Composites Pvt. Ltd.,)
Rep. by its Director
Mr.T.N.Prasad
Admin. Office at : Sigappi Achi Building,
4th Floor, Door No.18/3,
Rukumani Lakshmipathi Road,
(Marshalls Road), Egmore,
Chennai – 600 008.

... Petitioner / Plaintiff

Vs.

Mr.Khalil Ahmed,
The Municipal Commissioner,
The Kolkata Municipal Corporation,



No.5, S.N.Banerjee Road,
Kolkata – 700 013.

... Respondent / Garnishee

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Prayer in Cont.P.No.1937 of 2019: Contempt Petition filed under Section 11 of the Contempt of the Courts Act, 1971 praying to punish the respondent for willful disobedience of the order in C.S.No.138 of 2012 dated 06.06.2018.

For Petitioner :	Mr.M.Aravind Subramanian, Senior Counsel, For Mr.Sriprada Prabhakar
For Respondent :	Mr.Vijay Narayan, Senior Counsel For Mr.C.V. Ramachandra Murthy

Cause title in A.Nos.2021 & 2022 of 2020 in C.S.No.138 of 2012:

The Kolkatta Municipal Corporation
Rep. by its Planning and Development Department,
Kolkatta Municipal Corporation,
Kolkatta – 700 087.

... Applicant / Third Party
(in both Applications)

Vs.

M/s.Shriram Composite Private Limited,
("Formerly known as M/s. Shriram
Angerlehner Composites Pvt. Ltd.,)
Rep. by its Director
Mr.T.N.Prasad
Admin. Office at : Sigappi Achi Building,
4th Floor, Door No.18/3,



Rukumani Lakshmipathi Road,
(Marshalls Road), Egmore,
Chennai – 600 008.

... 1st Respondent / Plaintiff
(in both Applications)

2.M/s.Angerlehner Houch Uno,
United No.101 & 102, Plot No.45,
10B, East Topsia Road,
Kolkatta - 700 046
West Bengal
Rep. by its Manager

... 2nd Respondent / Defendant
(in both Applications)

Prayer in A.No.2021 of 2020: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 151 of CPC praying to stay the operation of the judgment dated 06.06.2018 in C.S.No.138 of 2012 till disposal of application for modification.

Prayer in A.No.2022 of 2020: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 151 of CPC praying to modify the exparte judgment dated 06.06.2018 in C.S.No.138 of 2012.

For Applicant :	Mr.Vijay Narayan, Senior Counsel For Mr.C.V. Ramachandra Murthy (in both Applications)
For Respondents :	Mr.M.Aravind Subramanian, Senior Counsel, For Mr.Sriprada Prabhakar (in both Applications)



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COMMON ORDER

The plaintiff M/s.Shriram Composites Private Limited has filed the Contempt Petition.

2.The suit had been filed against M/s.Angerlehner Hoch – UND seeking a judgment and decree against the defendant to pay a sum of Rs.3,32,55,878/- as on 31.01.2012 comprising Rs.2,43,33,569/- towards principal and Rs.89,22,309/- towards interest as on 31.03.2012 and for further interest at 20% p.a. on Rs.2,43,33,569/- from the date of the plaint till the date of realization and for costs of the suit.

3.In the suit the defendant had been served on 06.01.2015, but since they had not filed their written statement, the defendant was said exparte by order dated 23.03.2018. The plaintiff tendered exparte evidence.

4.By an earlier order dated 09.06.2014 in A.No.1470 of 2012, a learned Single Judge of this Court had made absolute a prohibitory order



directing the garnishee, Kolkatta Municipal Corporation from disbursing an amount of Rs.2,43,33,569/- together with interest to the defendant.

5.The prohibitory order was modified by an order dated 27.04.2012 and it had been restricted to a sum of Rs.2,43,33,569/-. The interest component had been deleted.

6.In the suit after considering the evidence tendered by the plaintiff, the garnishee was directed to release the said amount to the plaintiff with interest. It was held that the amount can be adjusted towards the suit claim and for the balance if any, the plaintiff could file necessary execution petition against the defendant.

7.The plaintiff filed the contempt petition contending that the garnishee, Kolkatta Municipal Corporation, in answer to a notice issued by the learned counsel for the plaintiff, had taken a stand that they are not liable to pay the said amount as directed in the judgment and decree of this Court. Complaining that the garnishee had refused to comply with the judgment of this Court, the contempt petition has been filed.



WEB COPY 8.The garnishee, Kolkatta Municipal Corporation, had filed A.No.2021 of 2020 to stay the operation of the judgment in C.S.No.138 of 2012 and A.No.2022 of 2020 seeking modification of the exparte judgment in C.S.No.138 of 2012 dated 06.06.2018.

9.In the affidavit filed in support of the two applications, the Director General (C) TPDD, Kolkatta Municipal Corporation had stated that the defendant in the suit had been declared as insolvent by an order of the Bankruptcy Court in Linz, Austria and an Administrator had been appointed by the said Court. This fact had been informed to Kolkatta Municipal Corporation, by letter dated 22.03.2013. It had been contended that therefore, there was an automatic cessation of the agreement, which the Kolkatta Municipal Corporation had with the defendant.

10.The agreement which the Kolkatta Municipal Corporation had with the defendant was with respect to performance of work for the Project of Upgradation (Refurbishment & Rehabilitation) of Man-Entry



Brick Sewers and Allied Works Project in 1.(a) Acharya Prafulla Chandra Road and (b) Kolutola Street Brick Sewers, 2.Rash Behari Avenue, 3.Canning Street, and 4.A.J.C.Boase Road Brick Sewers.

11.In pursuance to this agreement with Kolkatta Municipal Corporation, the defendant had entered into an agreement with the plaintiff for supply of GRP pipes on job work basis, on the basis of an agreement dated 18.09.2008. This agreement was terminated on 15.06.2009. The defendant had again issued a further purchase order on 21.07.2009 which was amended by another purchase order dated 31.07.2009 and further amended by another purchase order dated 16.01.2010.

12.It is the contention of the plaintiff that they had supplied the GRP pipes to the defendant but since the payments were not effected, they had instituted the suit.

13.Both the plaintiff and at the time of tendering evidence, the plaintiff had suppressed the fact that the defendant had been declared insolvent.



14. In the contempt petition, the parties were directed to tender evidence.

15. As a fact, the defendant had been declared insolvent by a competent Court in Austria by order dated 08.03.2013 and an Administrator had been appointed pursuant to such order. Naturally, the agreement between Kolkatta Municipal Corporation and the defendant had come to an abrupt end. Kolkatta Municipal Corporation can never, thereafter, be termed as a garnishee of the defendant.

16. In the judgment, in C.S.No.138 of 2012, on the basis of the pro-order passed against the garnishee, it had been incorporated that Kolkatta Municipal Corporation should not pay the defendant the amounts payable to them, but should pay them to the plaintiff. But the contract had ceased since the defendant had been declared insolvent.

17. Once the defendant had been declared insolvent, any individual or entity who or which had a claim against the insolvent can only approach the Court which so passed the adjudication. The plaintiff should



have preferred a claim before that particular Court. There can never be an order against Kolkatta Municipal Corporation since, their agreement with the defendant also stood terminated.

18.Had these facts been brought to the notice of the Court while passing judgment in C.S.No.138 of 2012 on 06.06.2018, this particular observation or direction that Kolkatta Municipal Corporation should not disburse the suit claim to the defendant but rather must disburse them to the plaintiff would not have been passed. They were not party to the suit. They were also not heard when that particular clause was incorporated in the judgment. An order of insolvency, like death of an individual brings to a complete halt existing contracts unless a successor takes over the estate and it is proved that he had benefited from the estate. There was no evidence provided by the plaintiff in this regard. The burden is always on the plaintiff to come out with true and correct facts. The decree was passed in the year 2018. The defendant had been declared insolvent in the year 2013. The plaintiff will have to necessarily find out other avenues to satisfy their suit claim. But they cannot hold Kolkatta Municipal Corporation to ransom merely because this Court had observed that as



garnishee, Kolkatta Municipal Corporation should pay the amounts payable to the defendant to the plaintiff.

19. The plaintiff cannot claim ignorance of this fact or the position of law when a party to an agreement is adjudicated as insolvent. It had been asserted by the learned Senior Counsel for the Kolkatta Municipal Corporation that the plaintiff was aware of the order adjudicating the defendant as insolvent. Even, if the plaintiff pleads ignorance, the fact cannot be denied or disputed. The plaintiff cannot plead ignorance since the party with whom they had a contractual relationship had been declared as insolvent. The plaintiff cannot plead ignorance of the effect of that in law.

20. In an old quotation of an English historian, John Selden (1584-1654), it had been stated that *“ignorance of the law excuses no man; not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him”*.



21.The learned Senior Counsel on behalf of the applicant / Kolkatta Municipal Corporation placed reliance on the judgment of the Hon'ble Supreme Court in **(2011) 11 SCC 275, K.K.Velusamy Vs. N.Palanisamy** wherein, the Hon'ble Supreme Court had stated that in the absence of any provision, for the purposes other than securing clarification required by the Court, the inherent power under Section 151 of CPC., subject to its limitations, can be invoked in appropriate cases.

22.A re-appraisal of the facts would show that the defendant in the suit had been declared insolvent by an order of the competent Court on 08.03.2013. The suit had been decreed exparte on 06.06.2018. The decree would stand, but the observations in the judgment, in paragraph No.5 has to be necessarily deleted since it had been so observed in the said paragraph only on the basis of the impression held out by the plaintiff that Kolkatta Municipal Corporation had amounts with them payable to the defendant. That, as a fact is not a correct fact. The contract between Kolkatta Municipal Corporation and the defendant stood terminated by the order adjudicating the defendant as insolvent by a competent Court.



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23. In view of the above fact, I hold that it can never be held that Kolkatta Municipal Corporation had deliberately violated the judgment of this Court. They were faced with an impossible task to perform. Their contract with Kolkatta Municipal Corporation stood frustrated for reasons beyond their control namely, insolvency of the defendant.

24. In the result,

i). Cont.P.No.1937 of 2019 is dismissed.

ii). A.No.2021 of 2020 is closed.

iii). A.No.2022 of 2020 is allowed and the judgment in C.S.No.138 of 2012 dated 06.06.2018 is modified by deleting the paragraph No.5 of the judgment.

iv). Registry is directed to issue a fresh copy of the judgment in C.S.No.138 of 2012 dated 06.06.2018 after deleting paragraph No.5 and observe that paragraph No.5 had been deleted consequent to this order in A.No.2022 of 2020.



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v).In view of the prolonged period for which the applications and the contempt petition has been pending, I would refrain from imposing costs.

02.08.2024

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Index:Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking



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C.V.KARTHIKEYAN,J.

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