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Crp No.281 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.281 of 2024

1. M/s Axis Global Automation,
No.33, Kathir Avenue, Andal Street,
Lakshmipuram, Coimbatore 641 001.

2. S.Sathesh

3. A.Ezhilmaran

... Petitioners

Vs.

M/s Tonglit Autogistic Private Limited,
rep. by its Legal Officer and authorised Signatory
Mrs.O.Bindu Madhavi, No.204, Kolambakkam Village,
Padakam, Maduranthagam Taluk, Padalam 603308.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of

India to issue a direction for numbering and taking on file of the petition in IA
SR No.14260/2023 filed by the petitioners/defendants for setting aside the
exparte order, under Order IX Rule 7 of CPC, pending on the file the
Principle District Court (Commercial Court) at Chengalpattu and with further
direction to dispose the same on merits, in accordance with law.

For Petitioners : Mr. V.Subramanian

ORDER



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This Civil Revision Petition has been filed to issue a direction for numbering and taking on file of the petition in IA SR No.14260/2023 filed by the petitioners/defendants for setting aside the exparte order, under Order IX Rule 7 of CPC, pending on the file the Principle District Court (Commercial Court) at Chengalpattu and with further direction to dispose the same on merits, in accordance with law.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff in the commercial suit in COS No.156/2022, which was filed for recovery of money and damages. In that suit, the petitioners/defendants were set exparte on 11.08.2022 and the case was posted to 18.09.2023. Hence, the petitioners have filed a petition to set aside the exparte order, and it was returned with a query as " how this petition is maintainable to be stated in Commercial Act". Though the petitioners represented the petition with necessary details, again the petitioner was returned with the same endorsement. Aggrieved over the return of the above petition under Order IX Rule 7 of CPC, this civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the



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materials on record.

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4. Admittedly, the petitioners were set exparte on 11.08.2023 and to set aside the exparte order, they filed a petition under Order IX Rule 7 of CPC. However, it was returned on 17.12.2023, stating that *how this petition is maintainable under Order IX Rule 7 of CPC in commercial Act and only appeal can lie.*

5. It is argued by the learned counsel for the petitioners that, Section 13 of Commercial Courts Act, 2015, clearly prescribed the kind of orders, against which appeal would lie; and in this regard, the proviso under Section 13(1-A) of the Act clearly states that the appeal shall lie on such orders, specifically enumerated under Order 43 of CPC; but, while looking at Order 43 of CPC, it does not provide an appeal from the order of setting exparte under Order IX Rule 6(a) of CPC. It is further argued by the learned counsel for the petitioners that, there is no provision in the Commercial Courts Act, 2015, speaks about setting exparte or setting aside the exparte order and at the same time, the Act, does not preclude applicability of Order IX Rule 7 of CPC in the commercial suit.

6. At this juncture, it is worthwhile to extract Section 13 of the



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Commercial Courts Act, 2015, which runs as follows.

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) 1[Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order. (1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order: Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).] (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

Further, Section 43 of CPC is extracted as under.



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Section 43. Execution of decrees passed by Civil Courts in places to which this code does not extend.

Any decree passed by civil court established in any part of India to which the provisions of this Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any court in the territories to which this Code extends.

7. In view of Section 13 of the Commercial Courts Act, the appeal will lie only for the orders passed by the Commercial Court Act, that has been specifically enumerated under Order 43 of CPC. But, in the Order 43 of CPC, there is no provision for appeal, to set aside the ex parte order under Order IX Rule 7 CPC. In such circumstances, since the Commercial Courts Act, does not preclude the applicability of Order IX Rule 7 of CPC in the commercial suit, the impugned order of return, passed by learned Principal District Judge, Chengalpattu, dated 18.12.2023 is liable to be set aside.

8. Accordingly, this civil revision petition is allowed and the impugned returned order, dated 18.12.2023 is set aside. The learned Principal District Judge, Chengalpattu is directed to take on file the petition filed by the



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petitioners under Order IX Rule 7 and dispose of the same on merits. The Registry is directed to return the original petition in IA SR No.14260/2023 filed by the petitioners in C.O.S.No.156/2022.

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Index:Yes/No
Internet:Yes/No
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To

The Principal District Judge, Chengalpattu.



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V.SIVAGNANAM, J.

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