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C.M.A.No.1306 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1306 of 2024

and

C.M.P.No.11761 of 2024

in

C.M.A.No.1306 of 2024

M/s.Shara Interglobe Logistics
Prop. Mr.Ramakrishnan
LIG-30 Amsaveni Tower, First Floor
Poonga Nagar, Civil Aerodromem Post
Coimbatore.

... Appellant

Vs.

M/s.Kronos Logistics India Private Limited
Rep. by its Manager - Credit Control
Mr.V.R.Saravanan
S/o.V.Radhakrishnan
Having office at 2nd floor, 324E, Keerthi
Poonamallee High Road, Kilpauk
Chennai-600 010.

.. Respondent



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Civil Miscellaneous Appeal filed under Section 13(1A) of Commercial Court Act, 2015, praying to set aside the conditional order dated 03.01.2024 passed in I.A.No.3 of 2023 in C.O.S.No.141 of 2023 on the file of the Commercial Court, Chennai by allowing the appeal herein.

For Petitioner : Mr.K.Balasubramaniam
For Respondent : Mr.M.Ganesan
caveator

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Captioned 'Civil Miscellaneous Appeal' {hereinafter 'CMA' for the sake of brevity} has been presented in this Court on 30.01.2024 assailing an 'order dated 03.01.2024 made in I.A.No.03 of 2023 in C.O.S.No.141 of 2023 {CNR No.TNCH1B-000199-2023}' [hereinafter 'impugned order' for the sake of convenience and clarity] made by the 'Commercial Court at Chennai' [hereinafter 'said Commercial Court' for the sake of convenience and clarity]. 'C.O.S.No.141 of 2023' shall hereinafter be referred to as 'said suit' for the sake of convenience and clarity.



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2. Short facts are that one 'Kronos Logistics India Private Limited'

{hereinafter 'Kronos' for the sake of brevity} filed a suit in the said Commercial Court for recovery of amounts said to be due on the basis of tax invoices qua a commercial transaction with 'M/s.Shara Interglobe Logistics' {hereinafter 'Shara' for the sake of brevity}; that Kronos is sole plaintiff and Shara is lone defendant in the said suit; that on service of suit summons, Shara entered appearance through a counsel (Mr.M.Selvaragahavan) on 20.06.2023; that on 20.06.2023, said Commercial Court made proceedings fixing time lines but it may not be necessary to delve into the same considering the limited legal perimeter of the captioned appeal; that Shara filed an application in I.A.No.3 of 2023 dated 20.10.2023 *inter alia* under Section 5 of 'the Limitation Act, 1963' {hereinafter 'said Limitation Act' for the sake of brevity} with a prayer for condonation of delay {'COD'} qua condonation of 50 days delay in filing written statement; that this I.A.No.3 of 2023 came to be disposed of by impugned order by the said Commercial Court *inter alia* saying that Shara should deposit principal qua suit claim {a little over Rs.12.71 Lakhs} (Rs.12,71,308/- to be precise) in a Fixed Deposit for one year on or before 02.02.2024 (further direction to renew periodically



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also forms part of the order) and held that failing compliance, COD petition will stand dismissed; that sole defendant Shara has preferred captioned appeal assailing the impugned order saying that Shara is aggrieved.

3. In the hearing today, Mr.K.Balasubramaniam, learned counsel for appellant / Shara and Mr.M.Ganesan, learned counsel, who has lodged caveat on behalf of Kronos are before us.

4. We heard learned counsel for appellant as regards admission.

5. Learned counsel for appellant submitted that convincing and compelling reasons in support of COD prayer have been given and therefore, COD petition should have been allowed without any condition or with some other minimal condition.

6. We are unable to agree with learned counsel for appellant, we are of the considered view that the captioned appeal does not pass muster in the Admission Board and that it deserves to be dismissed in the Admission



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Board for the reasons to be set out infra. While setting out the reasons, we shall be setting out the points, discussion on the same and dispositive reasoning rolled into one as one sub-paragraph each, one after the other.

This adumbration is as follows:

(a) 'The Commercial Courts Act, 2015 [Act 4 of 2016]' {hereinafter 'CCA' for the sake of brevity} came into force on 23.10.2015 in and by the Schedule to CCA read with Section 16 of CCA. Proviso to Order VIII Rule 1 of 'the Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of brevity, convenience and clarity] was substituted and relevant part of the Schedule in this regard reads as follows:

'(D) In Order VIII -

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely: -

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the



date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."; '

From the proviso to Order VIII Rule 1 of CPC as amended by CCA, it is clear that the cut off qua time frame for defendant to file written statement is 120 days from the date of service of suit summons. Therefore, reckoning date for computing 120 days time frame is the date of service of suit summons but there is no mention about the date of service of suit summons in the impugned order and learned counsel, who is before us also is unable to give the date on which the suit summons was served on Shara. However, there is no disputation that post service of suit summons, sole defendant entered appearance through a counsel (Mr.M.Selvaragahavan) on 20.06.2023. Therefore, we tested the matter by taking 20.06.2023 as the reckoning date and we find that COD application dated 20.10.2023 is still



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beyond 120 days. Therefore, we have no hesitation in saying that the captioned appeal does not pass muster in the Admission Board and deserves to be dismissed;

(b) From the impugned order and from the submissions made before us that there is no dispute that service of suit summons qua sole defendant Shara is prior to 20.06.2023, it is clear that written statement is sought to be filed beyond 120 days qua service of suit summons and therefore 50 days COD pales into insignificance. As regards condonation beyond 120 days, the lead case law that is holding the field is ***SCG Contracts {SCG Contracts (India) Private Limited Vs. K.S.Chamankar Infrastructure Private Limited}*** reported in ***(2019) 12 SCC 210*** rendered by Hon'ble Supreme Court. ***SCG Contracts*** principle is to the effect that the substituted proviso to Order VIII Rule 1 of CPC as substituted by CCA is mandatory and therefore, the sequitur is even one day delay beyond 120 days is not condonable;

(c) In any event, said Commercial Court has gone into



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the reasons qua COD but reasons have not found favour with said Commercial Court also. In this regard, having perused the affidavit filed in support of COD application, we also find that other than saying that date was mistakenly noted down there is no other convincing much less compelling reason for condonation of delay;

(d) We are of the considered view that the conditional order passed by said Commercial Court i.e., impugned order is contrary to **SCG Contracts** principle. To be noted, **SCG Contracts** principle was rendered by Hon'ble Supreme Court on 12.02.2019 and the impugned order has been made on 03.01.2024;

(d) In any event, learned counsel for appellant submits that deposit of principal (part of suit claim) amount as directed by impugned order has not been done, much less has the receipt been produced on or before 02.02.2024. This means that COD application stands dismissed even according to the impugned order. This is clear from penultimate paragraph i.e., paragraph



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No.9 of impugned order and the relevant portion of penultimate paragraph i.e., paragraph No.9 of impugned order reads as follows:

'In the result, the petition will be allowed on the following conditions.

The petitioner shall make the deposit of Rs.12,71,308/- being the principal amount for a period of one year in a Fixed Deposit Scheme and it shall be renewed periodically till the disposal of the suit in the name of the Court and produce the Fixed Deposit Receipt on or before 2.2.2024, failing which, the petition shall stand dismissed. Call on 2.2.2024.'

*{Underlining made by this
Court for ease of reference}*

Therefore, we need not labour on conditions imposed by said Commercial Court as the order has worked itself out and COD petition stands dismissed. This position is affirmed and conclusively concluded by this order and we do so by respectfully following **SCG Contracts** principle laid down by Hon'ble Supreme Court.



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7. Now that the captioned appeal stands dismissed inter alia after noticing that the impugned order has worked itself out and COD prayer of the sole defendant - Shara stands dismissed, we deem it appropriate to make it clear that the defendant, who has not filed written statement will still have a right to participate in trial qua cross-examination. This position of law is very well settled, however for the purpose of clarity and specificity we set out this point also but all other consequences vide CPC as amended by CCA for non-filing of written statement by lone defendant will follow.

8. Captioned CMA is dismissed in the Admission Board in the aforesaid manner. Consequently, captioned Civil Miscellaneous Petition also perishes with the appeal. Considering the facts and circumstances of the case and the fair manner in which submissions were made, we refrain from imposing costs.

(M.S.,J.)

(K.G.T.,J.)

11.06.2024



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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

1. The District Judge,
Commercial Court
Chennai.
2. The Section Officer
V.R.Section
High Court, Madras.

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