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C.R.P.No.841 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.841 of 2024

and

C.M.P.No.4174 of 2024

K.Srinath

Managing Director,

M/s.Adityaa Leather Export (P) Ltd.,

Plot No.297, SIDCO Industrial Estate,

Ambattur, Chennai – 600 098.

... Petitioner

Vs.

1.Air Connection Private Limited,

No.12, Poes Road First Street,

Teynampet, Chennai – 600 018

Rep. By its Director N.Sivasubramanian

2.M/s.Adityaa Leather Export (P) Limited,

Plot No.297, SIDCO Industrial Estate,

Ambattur, Chennai – 600 098.

Rep. By its Managing Director.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 23.01.2024 passed by the V Additional City Civil Court, Chennai in I.A.No.1 of 2023 in O.S.No.7215 of 2010 to the extent that the condition imposed on the petitioner to despoit the



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suit claim amount of Rs.20,99,146.51 to the credit of the above suit [O.S.No.7215 of 2010] on the file of the City Civil Court, Chennai in within a month viz., on or before 26.02.2024 and cost of Rs.10,000/- payable to the first respondent.

For Petitioner	: Mr.Krishna Srinivasan Senior Counsel for M/s.S.Ramasubramaniam Associates
For R1	: Ms.T.Jayalakshmi for M/s.Paul & Paul and Hudson Samuel Partners

ORDER

The petitioner/second defendant in O.S.No.7215 of 2010 challenging the order passed in I.A.No.1 of 2023 whereby the Trial Court by order dated 23.01.2024 while condoning the delay in filing the application to set aside the exparte decree dated 30.09.2011, imposed a condition directing the petitioner/second defendant to deposit the suit amount of Rs.20,99,146.51 to the credit of the suit in O.S.No.7215 of 2010 on the file of the City Civil Court, Chennain within a month viz., on or before 26.02.2024 and to pay a sum of Rs.10,000/- as cost to the first respondent/plaintiff.

2.The contention of the learned senior counsel for the petitioner is that



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the first respondent/plaintiff filed a suit seeking a decree directing the defendants to pay a sum of Rs.20,99,146.51/- along with interest in availing the service of import and export of consignments by air and sea from the respondents. The first respondent is a Custom House Agent who was handling the petitioner's consignments. The learned senior counsel submitted that the suit was filed originally in C.S.No.137 of 2001 before this Court and thereafter on the point of monetary jurisdiction, the same was transferred to the file of the City Civil Court and the same was taken on file in O.S.No.7215 of 2010. Even when the suit was pending before this Court, the petitioner was not served with any summons. Thereafter, on transfer of suit to the City Civil Court, summons were attempted to be taken against the petitioner. The learned senior counsel referred to the adjudication dated 08.03.2011 wherein it is seen that the case was kept pending awaiting summons, thereafter on 28.03.2011 it is recorded, as summons sent to the defendants not yet returned and therefore, issue fresh summons, thereafter the case was again posted to subsequent dates. He further referred to the summons issued by the City Civil Court stating that the address shown in the plaint as well as the summons taken is M/s.Adityaa Leather Exports at 297, North Phase, SIDCO Industrial Estate, Chennai-600098. On



25.03.2011, when the summons were taken to the said address one V.Haribabu Krishnan of M/s.Sree Ganapathy Industries has endorsed that they have been running their business in the said address from 26.03.2004 and they have no connection with M/s.Adityaa Leather Exports. Further, it is recorded that the petitioner vacated the premises in the year 2004. Thereafter, the first respondent filed a petition seeking substitution of service in I.A.No.10631 of 2011. The affidavit filed in I.A.No.10631 of 2011 is mischievous making false allegation as though the first respondent took steps several time to serve the petitioner and on all occasions, the petitioner evaded to receive the notice. Further, it is also averred that the petitioner purposefully evaded to receive notice and it is not possible to serve the petitioner in the ordinary course and thereafter, the Court below ordered substituted service by way of paper publication in a daily paper Makkal Kural and following the same, exparte order was passed.

3.The learned senior counsel further submitted that the petitioner was not aware about such mischievous exercise of the first respondent and he came to know about the exparte order when the first respondent initiated execution proceedings in E.P.No.4468 of 2022, at that time, showing the



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petitioner as Managing Director of M/s.Adityaa Leather Exports giving his residential address at Gandhi Nagar, Adyar, Chennai. On receipt of the EP notice, the petitioner finding the above mischievous act of the first respondent, in obtaining an exparte order, filed a petition to condone the delay of 4110 days in filing an application to set aside the exparte order in I.A.No.1 of 2023, giving reasons petitioner is not at fault, closed their business, vacated the premises, in fact their name has been struck off from the Register of Companies in the year 2013. But the first respondent taking summons to the same address repeatedly, projecting as though there was evasion of summons is not proper. The Lower Court in the impugned order recording the submissions of the petitioner condoned the delay of 4110 days, but directed the petitioner to deposit the suit claim amount of Rs.20,99,146.51 which is an abuse of process of law. Further, the Trial Court without verifying the summons and without considering, why and how summons returned, taking the affidavit of the first respondent truthful and passing an order of substituted service is nothing but an error apparent on the face of the record. Hence, prayed for setting aside the condition imposed to deposit the suit claim amount. In support of his contentions, the learned senior counsel relied upon the decision of the Hon'ble Supreme



Court in the case of *Trois Corporation HK Ltd., vs. National Ventures Pvt.*

Limited reported in *MANU/SCOR/34220/2024*, wherein the Apex Court held that in that case the High Court directed to deposit 75% of the suit claim as condition precedent for condoning the delay for setting aside the exparte decree as unwarranted.

4.The learned counsel for the first respondent submitted that it is not that the petitioner not aware about the dispute, in making payments for the consignments handled by the first respondent. The business relationship between the petitioner and the first respondent not denied. Further, prior to filing of the suit, there was exchange of pre-suit notice which was received by the petitioner, replied and rejoinder sent which all sent from the address at Ambattur Industrial Estate. Thereafter, the petitioner left the premises without any information to the first respondent. The first respondent having the last known address has taken all steps to serve summons to the said address and it is for the petitioner to have informed the first respondent about his change of address or stoppage of business but failed to do so and now makes a claim as though wantonly and with mischievous intention, the first respondent took summons to the address where the petitioner closed his



business in the year 2004. He further submitted that the Lower Court considered the petitioner's contention as well as the first respondent on referring to Ex.A48 to Ex.A51 had passed the order condoning the delay in filing the petition to set aside the exparte order finding inordinate delay imposed proportionate condition to deposit the suit claim. Hence, opposed this petition.

5.Considering the submissions made and on perusal of the materials, it is seen that the order passed by the Trial Court in I.A.No.1 off 2023 imposing the condition directing the petitioner to deposit the suit claim amount of Rs.20,99,146.51 would amount to pre-determining the suit. On the submissions and on perusal of records submitted before this Court, it is not in dispute that the petitioner closed his business in the year 2004 from Ambattur, SIDCO Industrial Estate and thereafter, all summons attempted to be served in the same address, endorsement made by the present occupant of the premises on 25.03.2011 that from 26.03.2004 M/s.Sree Ganapathy Industries is functioning and operating in the said address make it clear. The petitioner not having any business from the said address. In such circumstances, finding fault on the petitioner for the delay in serving of



summons, terming it as evasion would not be proper. It is also to be seen that when the first respondent filed EP proceedings, summons served to the petitioner's residential address at Adyar and it is not known, what stopped the respondent to have taken the same efforts and diligence before obtaining substituted service and exparte order, no answer for the same. The Apex Court had deprecated the practice of imposing huge amount as pre-condition for condoning the delay for setting aside the exparte decree and orders unwarranted

6.In view of the above, this Court finding the order of the Trial court in imposing the pre-condition to deposit the suit claim amount of Rs.20,99,146.51 in condoning the delay of 4110 days and setting aside the exparte order is nothing but an onerous and unwarranted condition in the circumstances of the case. Hence this Court is inclined to set aside the order passed by the Trial Court in imposing such condition to deposit the suit claim amount alone. The setting aside the exparte decree and the other condition of the Trial Court directing the petitioner to pay a sum of Rs.10,000/- to the first respondent, the same is sustained and the petitioner is directed to pay the cost of Rs.10,000/- to the first respondent within a period



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of ten days from the date of receipt of a copy of this order. Further, finding that the suit is of the year 2010 the Trial Court is directed to complete the proceedings in O.S.No.7215 of 2010 within a period of six months from the date of receipt of copy of this order.

7.In the result, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

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To

The V Additional Judge,
City Civil Court,
Chennai.

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