



CRP Nos.1418 to 1420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP Nos.1418 to 1420 of 2023

and

C.M.P.Nos.9558, 9577 & 9576 of 2023

M.Dhivya

... Petitioner in CRPs

Vs.

M/s.Cholamandalam Investments
Finance Company Ltd., Chennai
Rep.by its Authorised Signatory
having its office at Dare House
D.No.2, N.S.C.Bose Road, Parrys
Chennai-600 001

...Respondent in all CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair order in R.E.A.No.4, 3 & 5 of 2022 in R.E.P.No.169 of 2021 in Arbitration O.P.No.CIFCO/VF/EB-6/1 of 2017 dated 25.08.2022 on the file of the I Additional District Judge, Salem.

For Petitioner in all CRPs : Mr.E.C.Ganesh

For Respondent in all CRPs : No appearance



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COMMON ORDER

There is no representation for the respondent.

2. The petitioner is the second Judgment Debtor in REP.No.169 of 2021 on the file of the I Additional District Judge, Salem.

3. The learned counsel for the petitioner submitted that against this petitioner and another, the respondent/Decree Holder got an Arbitration award in O.P.No. CIFCO/VF/EB-6/1 of 2017. In pursuance of the Arbitration award, the Decree Holder filed R.E.P.No.169 of 2021 before the I Additional District Judge, Salem. The petitioner appeared through his counsel and sought time for filing counter. The case was posted on 07.04.2022 for filing counter and on that day, the petitioner's counsel was not able to attend the Court due to his car punctured on the mid way. Therefore, he had not filed counter and set ex-parte. For attachment, the case was adjourned to 28.06.2022.



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4. Under these circumstances, a chance has to be given to contest the EP. However, the petitioner has filed R.E.A.No.3 of 2022 seeking to set aside the ex-parte order dated 07.04.2022 and also filed another application in R.E.A.No.4 of 2022 to raise the attachment order dated 07.04.2022. The learned Judge, dismissed the petition filed in R.E.A.No.3 of 2022 on the ground that he has not found any sufficient cause for the petitioner's non-appearance and also dismissed the consequent petitions R.E.A.No.4 of 2022 as well as R.E.A.No.5 of 2022. Hence it is submitted that to grant sufficient opportunity to contest the EP.

5. On a perusal of the records, it is noticed that the petitioner is the 2nd respondent and the Judgment Debtor No.2 in the R.E.P.No.169 of 2021 in Arbitration O.P.No.CIFCO/VF/EB-6/1 of 2017. Further, it is noticed that in pursuance of Arbitration award, the respondent/Decree holder in R.E.P.No.169 of 2021 on the file of the I Additional District Judge, Salem. and notice has been issued. On receipt of the said notice, the petitioner appeared through his advocate before the Court. The case was posted for



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filing a counter, on that day, his counsel was not able to attend the Court for filing counter, since his car punctured on the way to the Court and not appeared in time and filing counter. In paragraph 8 of the affidavit, it is stated for not appeared before the Court.

6. The learned Judge in the impugned order P.8 recorded that the petitioner has not stated any reason to satisfy. Hence dismissed the petition. "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

7. In view of the facts and circumstances of the case, if the party has not acted diligently and remained inactive, her case may be rejected, but



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when the party is not inactive, a chance has to be given. Therefore, the reason stated by the learned Judge in the impugned order is unsustainable. In order to give fair chance to the petitioner to contest EP, ex-parte order has to be set aside. The trial Court has to consider the attending facts and circumstances for non appearance. Therefore, the impugned order is hereby set aside.

8. In view of the above, this Civil Revision Petitions are allowed. Consequently, the connected Civil Miscellaneous Petitions are closed. No costs. The trial Court is directed to receive the counter and decide the matter after hearing on both sides on merit.

04.03.2024

Index: Yes/No
Internet: Yes/No
rpl

To

The I Additional District Judge, Salem.

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V.SIVAGNANAM, J.

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