



C.M.P.No.12137 of 2024

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in Appeal (CAD) .SR.No.28596 of 2024

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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

Captioned 'Civil Miscellaneous Petition' ['CMP' for the sake of brevity] has been filed with a 'Condonation of Delay' ['CoD' for the sake of brevity] prayer qua 17 days delay in filing captioned appeal which is essentially under Section 13(1A) of 'the Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of convenience and clarity] {wrongly mentioned as 13-A in the memorandum of grounds of appeal}.

2.Be that as it may, the captioned appeal is directed against an order dated 13.12.2023 in I.A.No.1 of 2023 in C.O.S.No.140 of 2023 [CNR No.TNCB22-000587-2023] on the file of Commercial Court (District Judge Cadre), Coimbatore. This '13.12.2023 order' shall be referred to as 'impugned order' and the 'Commercial Court (District Judge Cadre), Coimbatore' shall be referred to as 'said Commercial Court', both for the sake of convenience.



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3. In and vide the impugned order, said Commercial Court has dismissed an application under Order VII Rule 11 (a) and (d) of CPC [limitation, lack of cause of action besides the issue of not getting slotted under any one of the clauses of Section 2(1)(c) of CCA.]

4. As regards CoD, Mr.Harikrishnan, learned counsel on record for the petitioner adverting to the earlier hearing now draws our attention to an order dated 07.02.2024 made in C.R.P.No.293 of 2024 wherein and whereby CRP has been disposed of by a Hon'ble single Judge of this Court providing a window for filing an appeal qua impugned order.

5. Issue notice.

6. Mr.K.Venkatasubban of M/s.Sarvabhman Associates (Law Firm) accepts notice for sole respondent, who is sole plaintiff before the said Commercial Court. To be noted, D1 to D4 in the said Commercial Court are the applicants in the aforementioned Order VII Rule 11 application.

7. As regards the reason, learned counsel for petitioner submits that the time consumed in pursuing the aforementioned C.R.P.No.293 of 2024 was the reason and learned counsel also adds that he would also be entitled to the benefit of Section 14 of the Limitation Act.



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8. Learned counsel for respondent submitted that the petitioner should have been more diligent and could have approached this Court within time.

9. We carefully considered the rival submissions and we find that considering the facts and circumstances of the case and the nature of the matter, the reason given for CoD is acceptable but before we dispose of the captioned CMP, we deem it appropriate to record that Mr.Sricharan Ranganathan, learned Senior counsel appearing on behalf of the petitioner pointed out that the question as to whether an appeal under proviso to Section 13(1A) of CCA would lie or would it be forbidden / barred is not blessed with any direct authority of this Court or Hon'ble Supreme Court. Learned counsel, however, submits that Hon'ble Delhi High Court has taken a view.

10. Therefore, we make it clear that notwithstanding the CoD prayer qua captioned CMP being allowed, the aforementioned question will be tested and the numbering of the captioned appeal is subject to the aforementioned question and it is open to both sides to raise all points in this regard.



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Captioned CMP ordered as prayed for albeit with aforementioned rider. There shall be no order as to costs.

gpa

[M.S.,J.] [K.G.T.,J.]
18.06.2024

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