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C.M.P.No.27744 of 2023

C.M.P.No.27744 of 2023
in
Appeal(CAD)No.32 of 2023

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

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

Captioned main appeal is directed against a judgment and decree dated 30.11.2022 made in COS No.19 of 2021 on the file of Principal District Judge's Court, Tiruppur. This '30.11.2022 judgment and decree' shall hereinafter be referred to as 'impugned judgment and decree' and 'Principal District Judge's Court, Tiruppur' shall hereinafter be referred to as 'said Commercial Court' both for the sake of convenience and clarity.

2. In and by the impugned judgment and decree, South India INC (R2 before us) suffered a decree to the tune of a little over Rs.36 Lakhs (Rs.36,03,444/-) and an immovable property belonging to the South India INC stands attached till realization of decretal amount and a charge has been created. Three months time has been granted for payment.



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3. Plaintiff in said Commercial Court is one 'Shiva Texyarn Limited' [hereinafter 'Shiva' for the sake of convenience and clarity].

4. Neither the plaintiff Shiva nor the defendant South India INC have preferred an appeal against the impugned judgment and decree but one Ms.D.Prema, Wife of Duraisamy, sought third party leave to file the captioned appeal vide C.M.P.No.15062 of 2023 in Appeal(CAD)SR.No.45016 of 2023 and on 27.11.2023, the following order was made by Hon'ble predecessor Bench:

*'CMP No.15062 of 2023
in
Appeal(CAD)SR.No.45016 of 2023*

*D.KRISHNAKUMAR,J.,
AND
P.DHANABAL,J.,*

*(Order of the Court was made by D.Krishnakumar,J.)
This petition has been filed to grant leave to file the third party appeal before this Court against Clause (3) and (4) of the Decree and Judgment dated 30.11.2022 made in COS No.19 of 2021 on the file of the learned Principal District Judge, Tiruppur.*

The petitioner / appellant has also stated reasons in the affidavit filed in support of the present petition to grant leave to file the third party appeal.

At this juncture, learned counsel for the petitioner has informed this Court that the petitioner undertakes to deposit the



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amount, as directed by this Court.

In view of the statement made by the learned counsel for the petitioner, this application is allowed.

Mr.K.Govi Gaesan, learned counsel takes notice for the first respondent.

Registry is directed to number the application filed to condone the delay in filing the third party appeal and post the matter on 28.11.2023.'

5. Mr.S.Shrish, learned counsel representing Mr.N.Manoharan, counsel on record for petitioner submits that as of today, he does not have instructions as to whether the deposit vide paragraph No.3 of the aforementioned order dated 27.11.2023 has been made and seeks time to get instructions.

6. As regards captioned CMP, a conditional stay i.e., stay on condition of deposit of 25% of decretal amount should be deposited was granted by Hon'ble predecessor Bench on 08.12.2022 and that order reads as follows:

***'C.M.P. No.27744 of 2023
in Appeal (CAD) No.32 of 2023***

**D.KRISHNAKUMAR, J.,
and
P.DHANABAL, J.,**

(Order of the Court was made by D.KRISHNAKUMAR, J.)

Seeking an order of interim stay in respect of Clauses (3) and



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(4) of the decree and judgment dated 30.11.2022 made in C.O.S. No.19 of 2021 on the file of the Principal District Judge, Tiruppur, the present petition has been filed.

2. Considering the grounds raised in the appeal, there shall be an order of interim stay as prayed for on condition that the petitioner shall deposit 25% of the decree amount with interest to the credit of C.O.S. No.19 of 2021 on the file of the Principal District Judge, Tiruppur, within a period of six weeks from the date of receipt of a copy of this order.

Post the matter after six weeks.'

7. There is no dispute or contestation before us that 25% of decretal amount has not been deposited until today. Six weeks time frame has also elapsed and there is no dispute about this also. Therefore, captioned C.M.P.No.27744 of 2023 is dismissed for non-compliance of the condition. There shall be no order as to costs.

[M.S., J] [K.G.T., J]
06.06.2024
(1/2)

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

mk



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