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C.R.P No.1602 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE M.NIRMAL KUMAR

C.R.P No.1602 of 2024

1.N/s.M.Senthilkumar
Rep. by its Partner M.Senthilkumar
S/o.Madheswaran
Door No.17, Achimuthumudhali Street
Ammamet, Salem-3.

2.M.Senthilkumar
3.S.Mathesh

... Petitioners

Vs.

Sri Rohini Tex
Rep. by its Partner
Mr.Subramanian, S/o.Vadivel
Door No.15/33, Achimuthumudhali Street
Ammamet, Salem-3.
Mr.Asik Ali

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decreetal order made in I.A No.4 of 2024 in C.O.S No.24 of 2022 dated 27.03.2024 on the file of the Commercial Court, District Judge Level, Salem.



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For Petitioners : Mr.R.Sankarasubbu
For Mr.S.M.Anantha Murugan
For Respondent : M/s.P.Veena Suresh

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal dated 23.07.2024 passed in I.A No.4 of 2024 in C.O.S No.24 of 2022 passed by the Commercial Court Salem.

2. The petitioners who are defendants in C.O.S No. 24 of 2022 had filed a petition in I.A No.4 of 2024 under Section 5 of Limitation Act, seeking to condone the delay of 367 days in filing the petition to set aside the exparte decree passed on 30.01.2023 and the same came to be dismissed by the Commercial Court, Salem on 27.03.2024. Against which, the present Civil Revision Petition is filed.

3. The contention of the petitioners is that PW1 was examined earlier. The advocate who appeared on behalf of the petitioners failed to cross examine the witnesses immediately and therefore, an exparte judgment



was passed on 30.01.2023. Thereafter, the respondent filed E.P No.15 of 2023. The petitioners then only came to know about the non cross examination of PW1, when they appeared in the Execution proceedings. At that time, the petitioners instructed their counsel to file a petition to set aside the exparte decree, but the said advocate did not file any petition. The contention of the petitioners is that the petitioners had never purchased any yarn from the respondent and petitioners not given an opportunity to contest their case and they have got all valid ground to put-forth their defences.

4. The learned counsel for the respondent/plaintiff on the other hand, objected for the petitioners' contention stating that even in the written statement, they have not denied the averments made in the plaint or denied the transaction between them or produced any material to show that they have made payments for the purchase of yarn. After passing of exparte decree only, the said defence has been made. She further submitted that the trial Court in para 12 had given the reasons that the petitioner has not given sufficient cause for the delay of 367 days. As seen from Ex.R1, it would reveal that the condone delay petition has been filed on 02.01.2024. But



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the exparte decree has been passed against the petitioners on 30.01.2023 and now, they claimed that only on receipt of the execution notice on 01.06.2023, they came to know about the falsity in the respondent's claim in the exparte decree. She further submitted that the principal amount is Rs.26,08,071/- and if interest is added it will be more than Rs.31,00,000/-.

5. The learned counsel for the petitioners would submit that initially the petitioners have paid Rs.10,00,000/- on 20.03.2024 in the Indian Overseas Bank, District Court Branch Salem, vide Challan No.20240320017234 and thereafter they have paid Rs.2,00,000/- on 02.07.2024 and after approaching this Court, subsequent to the order of this Court dated 19.06.2024, the petitioners have deposited Rs.5,00,000/- in E.P No.15 of 2023 in C.O.S No.20 of 2024. Thus, the petitioners have totally paid a sum of Rs.17,00,000/-. To show their bonafide, the petitioners are ready and willing to deposit another sum of Rs.3,00,000/- within a stipulated period which can be carefully considered while considering the claim of the respondent, if any.



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6. Considering the submission made by the learned counsel for the petitioners, the petitioners are directed to pay a sum of Rs.3,00,000/- to the respondent/plaintiff directly within a period of fifteen (15) days from the date of receipt of a copy of this order. Then the petitioners would have paid a sum of Rs.20,00,000/-. Considering the aforesaid reasons, the delay of 367 days in filing the set aside petition is condoned and the petitioners are directed to recall PW1 and cross examine him without any further delay. The trial Court is directed to permit the respondent/plaintiff to withdraw a sum of Rs.5,00,000/- which is already deposited by the petitioners/defendants. The trial Court namely, the Commercial Court, Salem is directed to dispose of the suit in C.O.S No.24 of 2022 within a period of two months from the date of receipt of a copy of this order.

7. With the above direction, this Civil Revision Petition is disposed of. No costs.

09.07.2024

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

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To

1. The Commercial Court
District Judge Level, Salem.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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