



C.R.P.No.1906 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.R.P.No.1906 of 2023

and C.M.P.No.12113 of 2023

NTR Memorial Trust,

Represented by its Central Purchase Manager,

Mr.D.Rajiv Reddy,

NTR Trust Bhavan,

Road No.2, Banjara Hills,

Hyderabad – 500 034

...Petitioner

vs.

Canadian Crystalline Water India Limited

Represented by its Vice President,

Mr.N.Balakrishnan,

No.7B, Parivakkam Road,

Senneerkuppam,

Poonamallee, Chennai – 600 056

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Docket Order dated 17.04.2023 made in I.A.No.3 of 2023 in COS.No.546 of 2022 on the file of the Sub Court, Poonamallee.



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For Petitioner : Ms.R.Arthi
for Mr.Dama Seshadri Naidu
Senior Advocate
For Respondent : Mr.Gowtham S.Raman

ORDER

This Civil Revision Petition has been filed by the defendant against the order passed in I.A.No.3 of 2023 in C.O.S.No.546 of 2022 on the file of Sub-Court, Poonamallee.

2. The defendant moved an application under Order IX Rule 7 of Code of Civil Procedure, 1908 (*hereinafter referred to as CPC*) for setting aside the order of exparte dated 23.01.2023.

3. The said petition was taken on file by the trial Court in I.A.No.3 of 2023, wherein the below said order was passed, which is impugned hereunder:

"This petition is filed to set aside the exparte order passed against the defendant for non-filing of written statement. Defendant has acknowledged the summons on



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16.09.2022 and has been set exparte on 23.01.2023. This court has no power to receive the written statement after the expiry of 120 days under the commercial court Act, 2015 and consequently the written statement filed along with this petition on 20.02.2023 cannot be received in the suit. Ignorance of law is not an excuse and the grounds in this petition being devoid of merits stands rejected, ab initio. In the result, this petition stands rejected.”

4. A bare perusal of the plaint would clearly show that the plaint was filed under Order VII Rule 1 of CPC read with Section 2(C) (xviii) and Section 6 of Commercial Courts Act, 2015 (*hereinafter referred to as CC Act*) for recovery of money of Rs.20,01,859/- and for costs.

5. Ms.R.Arthi, learned representing counsel for the petitioner would strenuously contend that the defendant is not aware that the plaint is filed under CC Act.

6. Mr.Gowtham S.Raman, learned counsel for the respondent per contra would vehemently argue that the suit itself is filed under Section 6 of the CC Act and the defendant is not permitted to take the stand. He would further contend that the trial Court has rightly rejected the petition, at the



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admission stage itself stating that the Court has no power to take the written statement after the expiry of 120 days as per provision of law. To substantiate the same, reliance was placed to the judgment made in O.S.A.Sr.No.123051 of 2019 of this Court dated 13.04.2022.

7. As per the amended provision of Order VIII Rule 1 of CPC, the defendant shall file the written statement within a period of 30 days and at the instance of the defendant for the reasons to be recorded by the trial Court. The period shall not be later than 120 days from the date of service of summons and the proviso to Order VIII Rule 1 reads that on expiry of 120 days from the date of service of summons, the defendant's right to file the written statement is forfeited.

8. Admittedly, the application under Order IX Rule 7 read with Section 151 CPC was filed by the revision petitioner/defendant on 20.02.2023. The summon was served to the defendant on 16.09.2022. Therefore, from the said date within 120 days, he should have filed the written statement. 120 days gets completed on 11.01.2023 and the above said petition was filed on 20.02.2023.



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9. Based on the above said discussions and observations, I find no infirmity or perversity in the order passed by the trial Court. In the result, this Civil Revision Petition stands dismissed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

12.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

The Sub Court, Poonamallee.



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R.KALAIMATHI, J.

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