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C.R.P.No.3013 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

C.R.P. No. 3013 of 2024

and

CMP.No.16197 of 2024

1. M/s. Moonstar Lines Private Limited,
Rep. by Mr.Abuthahir,

2. Mr. Balamurugan,
Manager of M/s.Moonstar Lines Pvt. Ltd.,
Both having office at
Old No.H.33, New No.10,
5th Street, H-Block, Anna Nagar East,
Chennai - 600 102.

... Petitioners

Vs.

M/s. Barkath Exports,
Rep. by its Prop: Mohamed Azharuddin,
Plot No.38, Door No.896 C,
Quaide Millath Street,
Nasavalur Nager, Jallandanpet,
Medavakkam, Chennai - 600 100.

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 01.02.2024 passed in E.A.No.1 of 2024 in E.P.No.9 of 2023 in C.O.S.No.373 of 2022 on the file of the Commercial Court.



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For Petitioner : Mr.S.Sathish Rajan
For Respondent : Mr.S.Abdul Malik

ORDER

This Civil Revision Petition has been filed to set aside the order dated 01.02.2024 passed in E.A.No.1 of 2024 in E.P.No.9 of 2023 in C.O.S.No.373 of 2022 on the file of the Commercial Court.

2. The petitioners are the defendants in O.S. No. 7624 of 2019. They have suffered an *exparte* decree dated 09.01.2023. Thereafter, they filed an application to set aside the *exparte* decree on 31.01.2023 and the same is yet to be numbered. In the meanwhile, the respondent/plaintiff had initiated the execution proceedings in E.P.No.9 of 2023. In the Execution Petition also, the petitioners/defendants were set *exparte* by order dated 23.11.2023. Thereafter the petitioners filed E.A.No.1 of 2024 to set aside the *exparte* decree dated 23.11.2023 and the same was allowed on 01.02.2024 with condition that the petitioners shall make a fixed deposit of Rs.4,90,000/- on or before 15.03.2024. The said order could not be complied with within the stipulated time and hence the petitioners have filed the petition under Section 148 seeking extension of



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time till 30.03.2024 in E.A.No.1 of 2024. Finding that the condition has not been complied with in E.A. No.1 of 2024 the said application was dismissed.

The petitioners herein now challenge the onerous condition of directing them to deposit almost 50% of the decree amount as not proper. Further reference was made to the Judgment of the Supreme Court in *Trois Corporation HK Ltd., Vs. National Ventures Pvt., Limited*, reported in 2024 SCC Online SC 263 wherein, the Apex Court at paragraph No. 21 as held as follows:-

"21. In this backdrop, the order of the High Court directing a deposit of 75% of the suit claim as a condition precedent for condoning the delay and for setting aside the exparte decree was unwarranted. The ends of justice would have been met if an order of costs was imposed on the appellant as a condition precedent for condoning the delay and for setting aside the exparte decree. Imposing a requirement of a deposit of 75% of the suit claim is disproportionate and would have to be set aside."

Hence, the learned counsel sought to set aside the order passed in E.A.No.1 of 2024 dated 01.02.2024.

3. The learned counsel for the respondent submitted that the suit has been filed by the respondent/plaintiff in O.S. No. 7624 of 2019 to direct the petitioners/defendants to pay a sum of Rs.6,02,407/- towards the cost of goods



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together with damages at 24% per annum from the date of invoice viz., 28.05.2018 till the realization. This suit was later transferred to the Commercial Court in C.S.O. No. 373 of 2022. The respondent/plaintiff has been evading service of summons and thereafter *exparte* decree passed on 09.01.2023. After filing Execution Petition the respondent had filed the above petition and despite the Trial Court passing an conditional order directing the petitioners to pay a sum of Rs.4,90,000/- on or before 15.03.2024, they did not comply with the same. The amount has not been deposited subsequently after extension of time. In spite of several extension granted to comply the order in E.A.1 of 2024 the petitioners, by giving one reason or the other, failed to comply with the order, hence, the trial Court finding that these petitions filed only to further drag on the proceedings dismissed all the petitions.

4. It is clear that petitioners suffered an *exparte* decree and thereafter, they were also set *exparte* in the execution proceedings. Now they have come forward with the present application seeking modification. Further,



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he submits to contest the suit on merits an opportunity must be given to them by setting aside the order passed by the Court below and the same has not considered. Further, the conditions imposed by the Court below is onerous and therefore also they could not comply with the same in time.

5. The learned counsel for the respondent submits he has no serious objection and his only requirement is that the petitioners participate in the proceedings and complete the proceedings without any delay. Further from the year 2019, the petitioners address could not be traced and now he has appeared and shown interest to participate in the suit proceedings.

6. In view of the same, imposing the condition to deposit 50% of the decree amount would be onerous. the apex Court in the above referred case had deprecated such conditions being imposed.

7. Accordingly, this Court directs the petitioners to deposit 25% of the decree amount i.e., a sum of Rs.2,45,000/- within 15 days from the date of receipt of a copy of this order and the same may be kept in fixed deposit to the credit of (O.S.No.7624 of 2019) C.S.O. No. 373 of 2022 on the file of



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Commercial Court, Chennai. On deposit of Rs.2,45,000/- the impugned order passed in E.A.1 of 2024 in E.P.No.9 of 2023 is set aside and the trial Court is directed to conclude the proceedings in C.O.S. No. 373 of 2022 within a period of 3 months from the date of deposit. It is made clear no further extension of time will be granted. In the event of failure to deposit the amount within 15 days of this order the Trial Court to proceed with the case conclude the proceedings expeditiously.

8. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

30.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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To
The Commercial Court, Chennai.



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M.NIRMAL KUMAR, J.

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and

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