



C.RP(MD)Nos.1113 and 1114 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.07.2024

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)Nos.1113 and 1114 of 2022

1.M/s.Ram Meenakshi Firm,
Through its Partners

2.R.Vetriselvan

3.V.Anbu Chezhiyan

... Petitioners in both petitions

Vs.

M/s.Annai Logistics,
Through its Proprietor,
S.Antony Cruz,
20/11-A, Roche Colony 1st Street,
Thoothukudi-3.

...Respondent in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the return endorsement dated 26.04.2022 made in unnumbered I.A.No.....of 2020 in O.S.No.44 of 2019 on the file of the learned Principal District Judge, Thoothukudi and direct the learned Principal District Judge, Thoothukudi to number the unnumbered I.A.No.... of 2020 in O.S.No.44 of 2019 and to decide the same on merits in accordance with law.

In both petitions

For Petitioners
For Respondent

: Mr.R.Pon Karthikeyan
: Mr.G.Prabhu Rajadurai
for Mr.M.P.Senthil



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COMMON ORDER

These civil revision petitions are filed with a prayer to set aside the return endorsement dated 26.04.2022 made in unnumbered I.A..... of 2020 in O.S.No. 44 of 2019 on the file of the learned Principal District Judge, Thoothukudi and to direct the learned Principal District Judge, Thoothukudi, to number the unnumbered I.A.No..... of 2020 in O.S.No.44 of 2019 and to decide the same on merits.

2. It can be seen that in O.S.No.44 of 2019, the petitioners herein were set *ex-parte* on 06.02.2020 and an *ex-parte* decree came to be passed on 07.02.2020. Thereafter, the petitioners had filed the present application to set aside the *ex-parte* decree on 28.02.2020. The petitioners had also filed another application to receive their written statement beyond the period of 120 days, that is not the subject matter of the present civil revision petition. As far as the present petition under Order 9 Rule 13 of the Code of Civil Procedure is concerned, the same was returned on 04.03.2020 along with an endorsement as to how the petition was maintainable. To the said return, the petitioners made an endorsement on 28.02.2022 explaining that the petition is maintainable and re-presented the papers. Even though the return was made in the year 2020



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owing to the COVID-19 pandemic and since the Hon'ble Supreme Court of India had decided to exclude the period, the matter was re-presented on 28.02.2022 claiming the benefit of exclusion period and without filing any application to condone the delay in re-presentation. After the application was re-presented on 28.02.2022, once again the papers were returned on 26.04.2022 by mentioning that the previous return is not complied with and time was granted one month. With the said endorsement, the petitioners have approached this Court directly.

3. It can be seen that when the matter was returned for the second time, the petitioners ought to have re-presented the same and argued the matter by requesting the Court to take up the issue in open Court regarding the maintainability. When the trial Court has only returned the papers questioning the maintainability and when according to the petitioners it is maintainable, the procedure that is open to the petitioners is to approach the trial Court itself with a request to take up the matter in open Court and to decide the issue of maintainability. The trial Court also in this case had raised the issue of maintainability in the earlier return dated 04.03.2020 and when the learned counsel for the petitioners has made an endorsement that the petition is maintainable, then the matter has to be called in the open Court and the matter



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has to be decided one way or the other as to whether the petition is maintainable or not. The trial Court need not repeatedly return the petition by questioning as to how the petition is maintainable without disclosing as to why the petition is deemed to be not maintainable. In that view of the matter, these civil revision petitions can be disposed of by directing the trial Court to take up the issue of maintainability in open Court and the learned counsel for both sides can be permitted to argue the matter and accordingly, the Order 9 Rule 13 petition can be numbered or disposed of depending on the decision that may be arrived at.

4. As far as the second application relating to the receiving of the written statement is concerned, it is the contention of the learned counsel for the respondent that the petitioners have forfeited their rights as per the Commercial Courts Act. It is the contention of the learned counsel for the petitioners that the suit itself was not being tried as a commercial suit and therefore, he will have a right. That has to be decided as and when the said application is taken up for hearing. It can be seen that the suit is filed for recovery of money in respect of the goods supplied and already the execution petition is pending. In view thereof, the Civil Revision Peitions are disposed of on the following terms:-



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(i)The Registry of this Court is directed to return the original impugned order i.e., the petition along with the orders thereon filed by the petitioner in these civil revision petitions to the learned counsel for the petitioners;

(ii)The petitioners can re-present the same within two weeks from the date of receipt of a copy of this order before the learned Principal District Judge, Thoothukudi. Upon such re-presentation, the petition can be listed “For Maintainability” in open Court on any subsequent date, in which both sides learned counsel can argue regarding the maintainability of the petition under Order 9 Rule 13 and depending on the outcome, the Court can either number the petition and take up the petition for hearing on merits or reject the petition as the case may be.

(iii)If only Order 9 Rule 13 petition is ultimately allowed, thereafter the question of taking up the other application for filing the written statement would arise. No costs.

09.07.2024

NCC:Yes/No
Index:Yes/No
Rmk



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To
1.The Principal District Judge, Thoothukudi.

D.BHARATHA CHAKRAVARTHY, J.

Rmk

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