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C.R.P(PD)No.5259 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2025

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P(PD)No.5259 of 2024
and C.M.P.Nos.28357 and 28910 of 2024

M/s.Shriram City Union Finance Ltd.
Regional Office
Rep. by its Manager and Authorised Signatory

... Petitioner

Vs.

M.Jayachandran (Died)
1.J.Sarayanya
2.J.Prabu
3.J.Jothimani

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside / modify in imposing of cost of Rs.50,000/- by order dated 14.07.2023 passed in I.A.No.1 of 2023 in A.O.P.No.146 of 2023 by the Commercial Court (District Judge Cadre) Coimbatore.

For Petitioner :Mr.Peer Mohamed

For Respondents : Mr.R.Prabakar

ORDER

This Civil Revision Petition arises against the order passed by the Commercial Court (District Judge Cadre), Coimbatore, in I.A.No.1 of 2023 in



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AOP No.146 of 2023 dated 14.07.2023.

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2.The Civil Revision Petitioner is the 1st respondent in AOP No.146 of 2023. It was originally presented as AOP No.143 of 2016. This challenges an award passed by an Arbitrator on 26.12.2015. The Civil Revision Petitioner was the claimant before the Arbitrator and the predecessor of the respondents herein was the respondent before the said authority.

3.Between the two parties, a trade loan agreement had been entered into. A sum of Rs.8 lakhs had been advanced by the claimant to the respondent. On account of the default committed by the borrower, the Civil Revision Petitioner invoked the Arbitration clause in the loan agreement and initiated Arbitration proceedings. It was successful before the Arbitrator. He passed an award for a sum of Rs.8,56,625/- together with interest, at the rate of 18% per annum and costs.

4.Aggrieved by the same, the respondent / borrower preferred AOP No.143 of 2016 under Section 34 of the Arbitration and Conciliation Act. Pending the proceedings, he expired. His legal heirs are continuing the same.



Summons were served on the Civil Revision Petitioner. The Civil Revision Petitioner did not enter appearance. Hence, it was set *exparte* on 12.01.2017.

5.To set aside that *exparte* order, a petition was moved in I.A.No.1 of 2023 before the learned Principal District Judge at Coimbatore, on whose file AOP No.143 of 2016 was then pending. Subsequent to the creation of the Commercial Courts in Coimbatore, AOP No.143 of 2016 was transferred to the file of the Commercial Court and renumbered as AOP No.146 of 2023. The application to set aside the *exparte* order which was originally numbered as I.A.No.1 of 2023, continued to have the same number and was received by the Commercial Court.

6.The pleading of the Civil Revision Petitioner was that the papers had been served on its office at Saibaba Colony. On account of mixing up of papers in the office, the summon was misplaced. Hence, none could appear before the Court on 12.01.2017, which resulted in the *exparte* order. Therefore, the petitioner pleaded that the *exparte* order may be set aside.

7.A counter was filed by the respondent pleading that the Civil Revision petitioner was represented by a counsel on 09.12.2016, but he did



not file a vakalat. This resulted in setting it *exparte* order on 12.01.2017.

Thereafter, the respondents had presented I.A.No.1 of 2021 and I.A.Nos.1 and 2 of 2021 and 2022 to implead themselves as parties on account of the death of the original Section 34 petitioner viz. one Jayachandran. In this proceeding too, notice was served on the Civil Revision Petitioner, and it had remained *exparte*. They raised a curious plea that as the *exparte* order was passed in the year 2017, the application filed after a period of three years is barred by virtue of Article 137 of the Limitation Act.

8.The learned Trial Judge considered the affidavit and counter and allowed the application on the condition that the Civil Revision Petitioner will pay a sum of Rs.50,000/- as cost. The Court rejected the argument that the application is barred under Article 137 of the Limitation Act, referring to the judgment of the Hon'ble Mr.Justice R.Subramanian in ***Rajasekar V. Govindammal (Late) and another [(2020 (6) CTC 724)]***. It came to a conclusion that for the mere fact there has been a change in officer does not mean there should be a default committed by the Civil Revision Petitioner. Yet, in order to give one more opportunity to the petitioner to contest the proceedings, it allowed the application on the aforesaid terms.



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9. Aggrieved by the said order, the Revision has come up before this Court at the instance of the claimant before the Arbitrator.

10. I heard Mr. Peer Mohamed for the Civil Revision Petitioner and Mr. R. Prabhakar for the respondent.

11. An application under Order IX Rule 7 of the Code of Civil Procedure calls upon a party only to give a "good cause". "Good cause" has been interpreted by this Court and by the Supreme Court to impose less rigorous standard than that applied to "sufficient cause" within the meaning of Section of the Limitation Act.

12. The relationship between the parties is not in dispute in the case. The petitioner is the creditor and the respondents represent the estate of the deceased debtor. The creditor has been strengthened with an award of the Arbitrator. It is to set aside that award that Section 34 petition has been filed.

In case, orders are passed in the absence of the creditor, serious prejudice will



be caused to it.

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13.Though there has been some negligence on the part of the creditor, to impose a cost of Rs.50,000/- when the loan amount itself is only Rs.8 lakhs, in my view is excessive and onerous. Hence, the portion of the order imposing the cost requires interference. At the same time, I have to take into consideration the objection of Mr.Prabhakar that a matter from the year 2017 has been unnecessarily delayed on account of filing of an Interlocutory Application by the creditor.

14.Hence, the cost of Rs.50,000/- is scaled down to Rs.5,000/- (Rupees Five Thousand Only). The same shall be paid within a period of **four (4) weeks** from the date of receipt of a copy of this order.

15.The Civil Revision Petition stands allowed accordingly. The condition imposed by the Commercial Court, Coimbatore alone is modified from Rs.50,000/- to **Rs.5,000/- (Rupees Five Thousand Only)**. No costs. Consequently, the connected miscellaneous petitions are closed.



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Index : Yes / No
Neutral Citation

To

1.Commercial Court
(District Judge Cadre)
Coimbatore

V.LAKSHMINARAYANAN, J.

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