

Com.Misc 43 of 2021

**IN THE COURT OF LXXXVII ADDL.CITY CIVIL &
SESSIONS JUDGE, (EXCLUSIVE DEDICATED
COMMERCIAL COURT)
AT BENGALURU (CCH.88)**

THIS THE 20th DAY OF APRIL 2022

PRESENT:

**SRI.CHANDRASHEKHAR U., B.Sc., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.Misc.No.43 /2021

PETITIONER: **M/s Gubbi Technologies Pvt. Ltd.,**
No. 1502, 2nd Floor, 19th Main Road,
Sector -1-HSR Layout,
Bengaluru 560 102
Represented by its Authorised
signatory Mr. Rejat . U.P

AND

RESPONDENT: **M/s S.I. Furnitures**
No. 19, Tank Bund Road,
N.S. Plya, 13th Main Road,
B T M 2nd Stage,
Bengaluru - 560 076
Rep. by its Proprietor
Mr. Anser Pasha

O R D E R S

The petitioner has filed the above petition under Order
IX Rules 13 and 14 r/w Section 151 of CPC, to set aside

the Judgment, dated 25.8.2021 and decree passed therein and to call for records and to give an opportunity to defendant to contest the case in the interest of justice and to stay the further proceedings with any operation in Com. Ex. Petition No. 342/2021 and for costs of the petition.

2. It is the case of the petitioner that the respondent herein had filed a suit for recovery of money allegedly before the Additional City Civil Judge, Bengaluru against the petitioner for a sum of Rs.5,11,345/- together with Court cost and current, and future interest at 18% per annum, which is numbered as O.S. No.3017/2019 on the file of the Additional City Civil & Sessions Judge, Bengaluru seeking the relief of directing the petitioner herein to pay a sum of Rs.5,11,345/-. The said suit came to be decreed by this Court.

3. It is further stated that the petitioner was an unsatisfied customer of the respondent and since, the materials supplied were defective and not up to the quality,

he had complained the matter, but on account of COVID-19 pandemic and transfer of case from City Civil Court to this Court and fact that there was no proper service of notice on the petitioner to appear and contest the matter by noting his absence the suit came to be decreed. Infact, the petitioner had filed detailed written statement, contending that the goods supplied were of defective quality and there was serious dispute about the quality and as such the petitioner had strong case to be contested in O.S.No. 3017/2019. But, since, the Court notice was served on the colleague of the advocate, there was no representation. Accordingly, the case came to be decreed and if an opportunity is not given to contest the matter, then, the petitioner will be put to loss and hardship.

4. Further, it is contended that the respondent has played fraud against the petitioner and in order to find out the same, an opportunity must be given to the petitioner to contest the matter by setting aside the judgment and

decree. Accordingly, he has prayed for allowing the application.

5. The petitioner has also filed IA I under Section 5 of the Limitation Act, to condone the delay if any in filing the above Misc. case.

6. The affidavit attached to IA I, reveals that he came to know about the passing of the decree only when execution case was filed and notice was served on him and therefore, from the date of knowledge, i.e., 20.11.2021, the case is filed within 30 days. Accordingly, he has prayed for allowing the application.

7. It is further stated that this Court has, instead of issuing of notice, has issued Court notice to the earlier counsel, who did not appear and therefore, an opportunity must be given to him, etc. Accordingly, he has prayed for condoning the delay.

8. The respondent has filed objection stating that the application is not maintainable and the same is liable to be dismissed in *limine*. He has denied para Nos.2 and 3 of the petition and contended that the allegation made in para No.4 is not completely correct. He has denied the allegation that the petitioner was not aware of the transfer of the case and issue of notice to other side and requirement of the issue of notice to the petitioner instead of his counsel, etc. He has denied all other allegations made in the petition.

9. He has also filed objection to IA, denying each and every allegation made in the application made therein and contended that the petitioner has not made out cogent reason to condone the delay in filing the application. Accordingly, he has prayed for dismissal of the case.

10. Heard. Learned counsel for the petitioner and respondent.

11. Now, the points that arise for my consideration are:-

1. Whether the petitioner has made out sufficient grounds to set aside the judgment and decree, dated 25.8.2021 in Com.O.S. No.3017/2019?
2. Whether the petitioner has made out sufficient grounds to condone the delay in filing the application?
3. What Order?

12. My findings on the above Points are as under:

Point No.1 :- In the **Negative**.

Point No.2 :- In the **Negative**.

Point No.3 :- As per the final Order
for the following reasons.

REASONS

13. **POINT Nos.1 & 2:** Learned counsel for the petitioner would argue that since material supplied by the respondent was defective quality and there was serious dispute about liability to make payment as contended by

the respondent herein in the suit Com.O.S.3017/2019. Infact, the furniture supplied by the respondent to the petitioner's company were of defective quality and therefore, the fraud has been played against the petitioner by the respondent and suit came to be filed, wherein, the petitioner has filed detailed written statement contending the defective quality of the goods supplied and fraud played by him etc, and issues were also framed. In the meantime, since, the suit was transferred to this Court, instead of issuing notice to the parties, this Court issued notice to the advocate, which is against the provision of Civil Rules of Practice, and therefore, the judgment and decree is to be set aside. Since, the petitioner was not aware of the transfer of the case, from the date of knowledge, i.e., after receipt of the notice in Execution Petition, he came to know about same on 20.11.2021 and within 30 days, the present petition is filed. If the petition is not entertained by condoning the delay, then, the petitioner will be put to loss and hardship. On the other hand, there is no hardship to

the respondent as an opportunity will be given to both the parties to put forward their case.

14. Per contra, learned counsel for the respondent would argue that the petition was filed on 10.12.2021 and judgment and decree was passed on 25.8.2021 and the petition came to be filed on 20.11.2021, which is beyond 30 days, time fixed for filing Misc. application for setting aside the judgment and decree. The reason assigned is only the date of knowledge. However, there is nothing to show that. No grounds are made out to condone the delay under Section 5 of the Limitation Act.

15. So, with this background, let me go through the order sheet pertaining to the Com.O.S. No.3017/2019. The suit was initially filled on the file of CCH-60 and summons were issued to the defendant/petitioner for his appearance and the case was posted for appearance on 28.5.2019 and on that date, the advocate for defendant filed Vakalath and thereafter, the case was posted for written statement by

13.8.2019, and on 13.8.2019, since, there was no representation, the defendant's written statement was taken as not filed and the case was posted for plaintiff's evidence by 26.9.2019. On 26.9.2019, the plaintiff filed affidavit evidence and got marked documents and since, there was no representation, the cross-examination was taken as nil. The case was posted for arguments, on 14.11.2019. On 14.11.2019 the counsel for the defendant filed IA to receive the written statement and after filing the objection, the IA, came to be allowed and written statement was received on payment of cost of Rs.2,000/-. Thereafter, issues were framed and when the case was posted for plaintiff's evidence, due to COVID-19 pandemic the bulk adjournment was given on 15.10.2019 and thereafter, the case was posted to Commercial Court. Again, the case was called on 7.12.2020. 21.1.2021, after constitution of the Commercial Court and since, the cases were already transferred to this Court. On 19.2.2021, again the case was started from the stage, where, it was stopped by

following the provisions of Commercial Courts Act, and the case was posted for filing affidavit, regarding admission and denial of documents. After transfer of the case, since, there was no representation by both the parties, the affidavit regarding admission and denial was taken as not filed. By the time, there was no any restriction of COVID-19 and the case was posted for plaintiff's evidence, defendant's evidence and the evidence of witnesses by following the provisions of Commercial Courts Act. Since, the counsels were absent on the previous date, this Court, though it was not necessary, as per the notification issued by the Principal District Judge, transferring the case, this Court issued Court notice to learned counsel for the petitioner and defendant to appear on 9.4.2021. On 9.4.2021, learned counsel for the petitioner and defendant appeared before the Court and they sought time, again the case was posted for the evidence as a last chance by 24.5.2021. Since, on 24.5.2021, they sought time, again, case was posted on 9.6.2021 for evidence of plaintiff and defendant's

evidence and due to SOP, again the case was adjourned to 24.6.2021, 19.7.2021, by then, the SOP was lifted and on 19.7.2021 PW1 was present, but, counsel for plaintiff and defendant were absent. Again this Court issued Court notice to the learned counsel for the plaintiff and defendant as an abundant caution and posted the case on 22.7.2021. In fact, the notification issued by the Principal District Judge, mandates that there will be no further notice to the parties and they are bound to appear on the date mentioned as the cases were adjourned from time to time by giving date and they were uploaded in the website. On 22.7.2021, there was no representation and the case was posted on 2.8.2021. On 2.8.2021, PW1 was present, but, learned counsel for the defendant was absent, inspite of issue of Court notice. Accordingly, the cross-examination was taken as nil and the case was posted for Judgment on 7.8.2021 and accordingly, the judgment came to be passed. So, the contention of the petitioner that the notice was not sent to the petitioner in accordance with the Civil Rules of

Practice, to the parties etc., cannot be accepted for the reason that after transfer of the case, the counsel for the defendant appeared on 9.4.2021 and the counsel was not vigilant and this Court cannot consider the case of the petitioner. It is not the case of the petitioner that after receipt of Court notice in Execution, he came to know about the judgment. Therefore, the contention that an opportunity should be given to the petitioner to contest the case cannot be accepted in the present case as this Court has intimated the counsel, though, it was not necessary to do so. Accordingly, the counsel for defendant appeared and if he fails to contest the matter, for which, Court is not responsible. No grounds are made out to set aside the judgment. In view of the above fact, I cannot accept the contention raised by the petitioner herein. Accordingly, I answer point No.1 and 2 in the **Negative**.

16. **Point No.3:-** For the aforesaid reasons, I proceed to pass the following Order.

ORDER

The application filed by the petitioner under Order IX Rules 13 and 14 r/w Section 151 of CPC is dismissed. No costs.

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in open Court on this the **20th day of April, 2022**).

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated commercial Court)
Bengaluru.