

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
COIMBATORE.**

Present: **Thiru. K. RAJASEKAR, B.Com., B.L.,**  
Principal District Judge, Coimbatore.

Thursday, this the 09<sup>th</sup> day of February 2023

**E.A.No.1/2022 in EP No.83/2011 in AOP No.10/1997**

M/s.Kwality Spinning Mills Ltd  
rep by its Managing Director  
Udumalpet road, Pollachi ...Petitioner/Respondent

/vs/

M/s.The Cotton Corporation of India Ltd.,  
rep by its Branch Manager ...Respondent/Petitioner

This petition is coming before me for final hearing in the presence of **Thiru.J.Mohan**, Advocate for the petitioner/respondent, and of **Tvl.V.Umadevi and R.Asokan**, Advocates for the respondent/petitioner and upon perusing the records and hearing arguments of both side and having stood over for consideration till this day, this Court passed the following

**ORDER**

This application has been filed by the Petitioner under Order 21 Rule 105 of CPC, to condone the delay of 3925 days in filing the application to set aside the exparte order passed against them on 01.08.2011.

**2. The case of the petitioner is as follows :**

The petitioner is the respondent and Judgment debtor in E.P.No.83/2011, in which, the execution petition has been filed based on the award dated 14.08.2000 passed in the Arbitration proceedings. Against which, the petitioner herein has also filed the Arbitration Original Petition

challenging the award and the same was dismissed on 25.02.2010. Aggrieved over the same, the petitioner has also filed Civil Miscellaneous Appeal before the Hon'ble High Court in CMA No.2492/2011. In the meantime, the respondent filed this execution petition and the notice was served on the petitioner herein. But, before filing of the counter, the property has been attached in the execution petition. Immediately, this petitioner has filed the petition to set aside the exparte order of attachment. In the meantime, on 23.08.2011, further proceedings of the execution, has been stayed by the Hon'ble High Court in CMA and the petitioner herein has also deposited Rs.7,00,000/ into the Court. Originally, this petitioner has filed a petition to set aside the exparte order and the same was returned for certain defects. Unfortunately, the same has been misplaced and the petitioner was not able to trace out. Hence, he has come forward with this petition to set aside exparte order passed against them in this execution petition and there is a delay of 3925 days. Hence prays to condone the delay.

**3. The counter statement filed by the respondent :**

The reason stated by the petitioner is not proper and there is an inordinate delay in filing the application and this delay was caused deliberately to gain time and there is no reason to condone the delay and prays to dismiss the petition.

**4. The point for consideration :** Whether the petition is to be allowed or not?

**Point :**

**5.** I have considered submissions made by both sides. Admittedly the execution petition was filed in the year 2011 and an order of attachment was passed on 01.08.2011, after placing the petitioner herein as exparte. It is also the admitted case of the petitioner herein that he has

filed the Civil Miscellaneous Appeal against the Arbitration Original Petition, and in which, interim stay has been passed against the execution of the decree. It is also the case of the petitioner herein that he has already deposited Rs.7,00,000/- as per the interim order passed by the Hon'ble High Court, and Civil Miscellaneous Appeal has been disposed on 20.09.2021. Under this circumstances, the petitioner, from the month when the execution proceedings initiated, has contesting the validity of the award before the Hon'ble High Court and only recently, it has been disposed off and immediately, he has come forward to file this petition to set aside the exparte order passed against them along with the petition to condone the delay of 3925 days. Admittedly, interim stay was granted by the Hon'ble High Court from the year 2011 till the disposal of the Civil Miscellaneous Appeal in the year 2021. Under this circumstances, this Court is inclined to allow this petition to condone the delay by imposing costs.

**In the result, petition is allowed on payment of cost of Rs.3,000/- by the petitioner to the respondent on or before 24.02.2023, failing which the order passed herein stands cancelled automatically.**

Dictated to steno-typist directly and typed by her in the computer, corrected and pronounced by me in the open Court, on this the 09<sup>th</sup> day of February 2023.

PRINCIPAL DISTRICT JUDGE,  
COIMBATORE

// TRUE COPY //

Draft/Fair Order  
E.A.No.1/2022  
in  
E.P.No.83/2011  
in  
AP No.10/1997  
Dated 09.02.2023