

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Thursday, the 28th day of August, 2025

I.A. No. 11 2025
&
I.A. No.12 of 2025
in
C.O.S. No.18 of 2024
(CNR No.TNCB22-000059-2024)

M/s. Sri Murugan Foundry Equipment
rep. by its Managing Partner R.Murugaiyan

... Petitioner / Plaintiff

// Vs //

1. **M/s. Horizon Metal Tech Pvt. Ltd.,**
represented by its Director
2. Inderlal Ramsharan Sharma
Director of M/s. Horizon Metal Tech Pvt. Ltd.,
3. Sunil Inderlal Sharma,
Director of M/s. Horizon Metal Tech Pvt. Ltd.,
4. Ram Lok
Director of M/s. Horizon Metal Tech Pvt. Ltd.,
5. Ashok Sharma
Director of M/s. Horizon Metal Tech Pvt. Ltd.,

... Respondents / Defendants

The petition came up for final hearing before me on 26.08.2025 in the presence of Thiru.R.Senthilnathan, Advocate for the petitioner / plaintiff and Thiru. Iyalpari SR & Poorvaja A R, Advocates for the respondents / defendants and upon perusing the records, and having stood over for consideration till this date, this court doth passed the following:-

COMMON ORDER

The petitioner has filed two petitions. In I.A.No.11 of 2025 the petitioner have come up with the relief seeking for to reopen the case and the petition in I.A.No.12 of 2025 has been filed by the petitioner seeking to Recall the LW.1 to LW.3 on the defendant side for cross examination under Section 151 and Order XVIII Rule 17 of C.P.C.

2. The petition averments in both petitions are almost similar which are found essential for the disposal of the petition is that:-

The petitioner is the plaintiff in C.O.S.No.18 of 2024 and the defendant in C.O.S.No.7 of 2025. It is the submission of the petitioner that the suit has been posted on 22.07.2025 for examination of witnesses on both sides. During the said hearing date on 22.07.2025 the petitioner mentioned that he was not in station. Hence the petitioner submit that he was unable to attend the Court on the said date due to emergent business cause and also submit that he has filed some documents in support of his stand. Due to which this Court is mentioned to have closed the evidence on the side of the petitioner and also has recorded the

evidence on the defendant side and submit that the petitioner was unable to give any instruction to his counsel for cross examination of the DW.1 to DW.3 due to his absence. The petitioner submit that this court is also mentioned to have closed the opportunity for the petitioner to cross examine the respondents / defendants side witnesses. It is the submission of the petitioner that the petitioner was not in station and hence he was unable to be present in the court on the said date and claim that his absence was either willful nor wanton. Mentioning that the petitioner / plaintiff has valid case on his side, the petitioner sought for to allow the petitions to adduce evidence on his side and also sought for to cross examine the witnesses on the defendant side by allowing the petitions.

3. By denying the petition averments the respondents/defendants have filed the counter. The sum and substance of the counter averments which are found essential for the disposal of the petition is that:-

The respondent is the defendant in C.O.S.No.18 of 2024 and the plaintiff in C.O.S.No.7 of 2025. The respondent has denied the claim of the petitioner in I.A.No.11 of 2025 and I.A.No.12 of 2025. It is the submission of the respondent that both suit have been posted on 22.07.2025 and 23.07.2025 for examination of witnesses on both sides and submitted that the case management hearing was fixed on 15.04.2025 and the parties have agreed for the fixture of dates for

examination on 22.07.2025 and 23.07.2025. Further, it is the submission of the respondent that the petitioner had ample time for to plan their travel and provide instructions for cross examination of LW.1 to LW.3 on the defendant side. Further, it is the submission of the respondent that the documents filed by the petitioner are filed to show that the petitioner was in out of station on the dates of examination of the witnesses and submit that the invoices filed by the petitioner are in different area and do not coincide with the dates and schedule of examination and do not indicate the petitioner's visit or stay on those places. Further, the said invoices have been issued under different names other than the petitioner and submit that only in one invoice the name of the petitioner is found.

b) Further, it is the contention of the respondent that the petitioner had willfully neglected the Court proceedings and have not come up with the any documents and have come up with the documents to mislead the Court and submit that submit that the documents furnished by the petitioner do not substantiate the averments of the petitioner. Further it is also the stand of the respondent that the petitioner has come up with the false excuse for his non appearance during the examination of witnesses. Further it is also the submission of the respondent that the counsel for the petitioner was present in the Court on 22.07.2025 and 23.07.2025 and however he has refused to cross examine the defendant / respondent side witnesses LW.1 to LW.3 who were

examined as DW.1 to DW.3 and who have travelled from different State to lead evidence before this Court. It is the contention of the respondent that the stand of the petitioner that the petitioner was unable to give instruction to his counsel to cross examine the LW.1 to LW.3 is false and submit that the absence of the petitioner was deliberate one and the petitioner's counsel has deliberately abstained from examining the witnesses LW.1 to LW.3 on the defendant side. Hence, the respondent has sought for to dismiss the petitions in I.A.No.11 of 2025 and also I.A.No.12 of 2025.

4. Point for consideration:-

Whether the petitions could be allowed?

Point:-

5. This Court has heard the counsel on both sides. As rightly pointed out by the learned counsel for the respondent, this Court after discussing and after the consent of counsel on both sides has fixed the Case Management Hearing and also fixed the dates for examination of witnesses. On the consent of the counsels on both sides the examination date has been fixed and now the counsel for the petitioner who has come up with the stand that the petitioner was absent as he was not station due to business travel cannot be at the first hand be treated as a valid cause for his absence for examination.

6. It is also the contention of the learned counsel for the respondent that the absence of the petitioner before this Court was deliberate one during the date of cross examination. When the above contention was looked into, the learned counsel for the petitioner was present on the date of examination of the witnesses before the Court. The petitioner is also aware of the fact that the witnesses on the defendant / respondent side were from the other State and they were before this Court on the date of examination. For traveling from the other States the petitioner is in a position to pre schedule his date of travel for his appearance before this Court. So since the case management hearing itself has been fixed as per the scheme of the Commercial Courts Act to suite the convenience of the parties and with the consent of the parties the case management was fixed and now one of the party coming and saying that he was not present as he has travelled to out station cannot be a valid cause as mentioned by this Court.

7. At the same time this Court has considered the nature of suit proceedings and one suit in C.O.S.No.18 of 2024 is filed by the present petitioner and yet another suit is filed by the defendant in C.O.S.No.18 of 2024 which is in C.O.S.No.7 of 2025. Both parties have come up with the rival claims for the one single transaction. Hence, to part with substantial justice and for complete adjudication this Court would find it appropriate that the trial proceedings if completed would be helpful for just adjudication of the dispute

between the parties and also to meet the ends of justice. At the same time though this Court do not conclude that the petitioner has not appeared before this Court deliberately, but the circumstances shows that as contended by the respondent the absence of the petitioner on date of examination for subjecting him to examination and the petitioner has also failed to give instruction to his counsel as mentioned by him in the affidavit to cross examine the witnesses on the defendant side shows that the petitioner was not given due care for the proceedings before this Court and it shows that the act of the petitioner seems to be a deliberate one for non appearance and his inaction for appearing in the examination. Under the circumstances this Court would consider appropriate to allow the petitions on costs.

8. This Court has also ascertained the fact that one of the witness on the defendant have travelled from Himachal Pradesh and one witness has travelled from Pune and another witness has travelled from from some other place. The petitioner has not come up with any valid reasonable cause for his non appearance. Hence this Court would consider appropriate to impose exemplary costs of Rs.1,00,000/- for his non appearance and examination.

9. In the result the petitions are allowed with the direction to the petitioner to pay an exemplary costs of Rs.1,00,000/- to the respondent / defendant herein on or before 01.09.2025 and shall file the Cost Memo to that effect. In case if the cost is not paid by 01.09.2025 and if the petitioner fails to

file the cost memo by 01.09.2025, the petition shall stand automatically dismissed. Further the counsel on both sides have agreed for examination of witnesses on 16.09.2025 and 17.09.2025 in case if the petition is allowed. In such case the examination of the witnesses shall be held on 16.09.2025 and 17.09.2025. Further if the petitioner / plaintiff in C.O.S.No.18 of 2025 do not come forward to appear by 16.09.2025 and 17.09.2025 it shall be treated that the petitioner in these petitions has waived his right to adduce evidence and also waived his right to cross examine the DW.1 to DW.3 in this proceedings and the suit shall be resumed to the stage of arguments. Call on 01.09.2025.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 28th day of August 2025.

sd / Tr. K.Hariharan, M.L.,
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

sd / Tr. K.Hariharan, M.L.,
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore