

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2015

CORAM

THE HON'BLE MR. JUSTICES.MANIKUMAR

and

THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.A.No.1017 of 2015 against W.P.22812/13

1. R.Moses Ambrose
2. N.Velayutham
3. K.Murali
4. N.Kalaivendan

.. Appellants

vs

The District Manager,
TASMAC Limited,
No.29, 30, Industrial Estate,
Kakkalur, Thiruvallur.

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent Act for setting aside the order dated 27.02.2015 passed by the Single Judge of this Court in W.P.No.22812 of 2013.

For Appellant ... Mr. A.Antony Arokiaraja

For Respondent ... Mr.Arivazhagan
for Mr.S.Muthuraj for TASMAC

JUDGMENT

(Judgment of the Court was pronounced by S.MANIKUMAR, J.)

Material on record discloses that petitioners have filed W.P.No.22812 of 2013, for issuance of a Writ of a Certiorarified Mandamus, to quash the proceedings of the District Manager, Tamil Nadu State Marketing Corporation Limited, Kakkalur, Thiruvallur District in Na.Ka.No.A2-9048-2012 dated 22.05.2013. The impugned proceedings therein, is an order of dismissal. The said Writ Petition has been filed by one Mr.Antony Arokiaraj, the learned Counsel for the petitioners therein.

2. Material on record further discloses that pending disposal of the above said writ petition, the petitioners seemed to have filed another Writ Petition in W.P.No.21808 of 2014 for the very same prayer and this time, it was through Mr.K.Sasindran, learned Counsel for the petitioners therein.

3. When the subsequent W.P.21804 of 2014 came up on 17.09.2014, on the submission and endorsement made by the abovesaid Counsel, the Writ Petition has been dismissed as withdrawn. The order dated 17.09.2014 made in W.P.No.21808 of 2014 is extracted hereunder:

"In view of the submission and endorsement made by the learned counsel appearing for the petitioners seeking permission to withdraw this writ petition, the Writ Petition is dismissed as withdrawn. No order as to costs. The connected Miscellaneous Petition is closed."

4. Thereafter, when the first W.P.No.22812 of 2013 came up for hearing on 27.02.2015, the same has also been dismissed on the grounds, inter alia that W.P.No.21808 of 2014 has been dismissed as withdrawn, without granting any liberty. Writ Court has ordered as follows:

"The challenge in this writ petition is to the order dated 22.06.2013, whereby and where under, the petitioners were removed from service by the respondent."

2. When this writ petition was taken up on 20.02.2015, the learned Standing Counsel for TASMAG on instructions submitted that the very same petitioners have challenged the very same order earlier in W.P.No.21808 of 2014 and the said writ petition was dismissed as withdrawn without liberty. However, the learned counsel for the petitioners pleaded ignorance. Therefore, I have directed the Registry to put up records in W.P.No.21808 of 2014.

3. The original records in W.P.No.21808 of 2014 indicates that the petitioners herein have filed the said writ petition and it was ultimately dismissed as withdrawn by order dated 17.09.2014. The learned counsel for the petitioners made an endorsement that he is withdrawing the writ petition. The petitioners have not taken liberty from this Court to file a fresh writ petition. In the present writ petition, none of the petitioners have disclosed that they have earlier filed a writ petition in W.P.No.21808 of 2014.

4. I am therefore of the view that the petitioners have suppressed the factum of dismissal of the earlier writ petition and filed a fresh writ petition, which is legally not maintainable.

In the upshot, I dismiss the writ petition. No costs.'

5. Assailing the correctness of the order made in W.P.No.22812 of 2013 dated 27.02.2015, the present Writ Appeal has been filed contending inter alia that the Writ Court ought to have considered that W.P.No.22812 of 2013 filed subsequently alone was withdrawn and since W.P.No.22812 of 2013 was already pending on the file of this Court, no leave was required be obtained to file another writ petition on the same cause of action i.e. challenge to the proceedings of the District Manager, Tamil Nadu State Marketing Corporation Limited, Kakkalur, Thiruvallur District in Na.Ka.No.A2-9048-2012 dated 22.05.2013 by which the District Manager, Tiruvallur District, has dismissed the petitioners.

6. According to the petitioners, the observation of the Writ Court, that there was suppression of the factum of earlier dismissal and filing of a fresh writ petition, is also not correct, because W.P.No.22812 of 2013 was filed earlier in time. Learned Counsel for the petitioner further submitted that when W.P.No.21808 of 2014 filed subsequently was withdrawn, the writ court ought to have adjudicated the issues raised in the pending Writ Petition No.22812 of 2013, on merits, in which counter affidavit has already been filed.

7. On the above grounds, we heard the learned Counsel for the TASMAL Limited. He submitted that on the date when W.P.No.22812 of 2013 was dismissed, vide order dated 27.02.2015, counter affidavit had already been filed.

8. Going through the materials on records, we are in agreement with the contentions raised by the appellants/writ petitioners. In so far as suppression of the earlier writ petition W.P.No.22812 of 2013 is concerned, certainly, it is so, when the subsequent writ petition 21808/2014 was filed, W.P.No.22812/2013 was pending and W.P.No.21808 of 2014 was withdrawn on 17.09.2014. Conduct of the petitioner in filing successive writ petition on the same cause of action is not appreciable. But once the subsequent writ petition 21808/2014 has been withdrawn and dismissed on 17.9.2014, the earlier W.P.22812/2013, could have been dismissed on merits, when counter affidavit is already on record. As rightly contended, leave is required only when a fresh writ petition is required to be filed on the same cause of action, which on the facts and circumstances is not required. Both the points raised are in favour of the writ petitioners/appellants. For the reasons stated supra, we deem it fit to interfere with the impugned order made in W.P.No.22812 of 2013

dated 27.02.2015. Accordingly, the said order is set aside. The writ court is requested to take up the matter for disposal. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

tsi

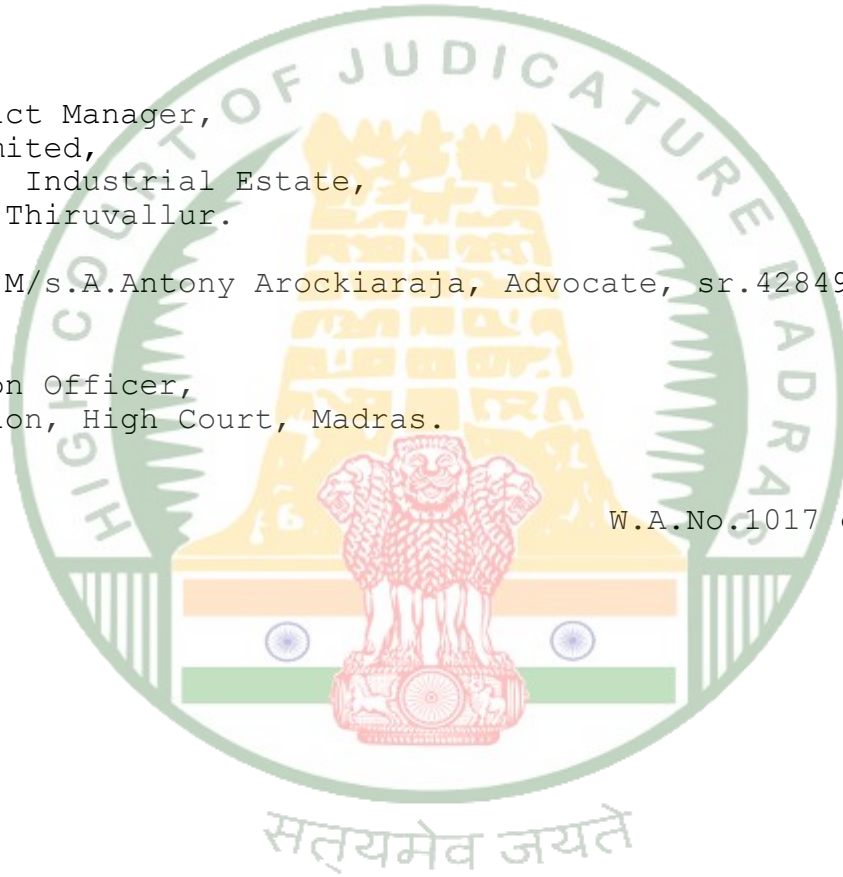
To
The District Manager,
TASMAC Limited,
No.29, 30, Industrial Estate,
Kakkalur, Thiruvallur.

+2 ccs to M/s.A.Antony Arockiaraja, Advocate, sr.42849

Copy to:
The Section Officer,
Writ Section, High Court, Madras.

W.A.No.1017 of 2015

rj(co)
kra(1/9)



WEB COPY