

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM :

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.S.A. No.238 of 2015

and

M.P.No.1 of 2015

1.P.J.Ethiraj
2.P.E.Naveenkumar
3.S.V.Tamizhselvan

...Appellant

-vs-

1.R.Mathiazhagan
2.Rajinish Kumar Rai
3.M.Kumar

...Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against Order and Decretal Order dated 23.04.2015 in Application (Appeal) No.2182 of 2015 in (Summary Suit) C.S.No.247 of 2013 on the file of original side of this Court.

For Appellant : Mr.M.C.Govindan

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

We are not inclined to interfere with the impugned order in respect of the discretion exercised by the learned Single Judge on account of the fact that the onerous condition of deposit of Rs.3 crores was put by the Master in an application under Order 9 Rule 9 of C.P.C. filed to set aside the ex parte proceedings. This will not preclude the appellant from pressing the same

relief in the appropriate application, as both the applications for leave to defend and the application filed under Order 12 Rule 6 C.P.C. are still pending. In a nutshell, the relief appears to have been granted on an application where it ought not to have been granted, but can certainly be considered for purposes of deciding the other applications.

2.The application for leave to defend along with the application under Order 12 Rule 6 C.P.C. be posted before the learned Single Judge, subject to be in order, on an early date.

3.Original Side Appeal stands dismissed with the aforesaid direction. Consequently, M.P.No.1 of 2015 also stands dismissed.

4.It is clarified that since the impugned order is conditional on the respondent paying a sum of Rs.25,000/- and that amount is stated to have been deposited in this Court, it is liable to be released to the appellant.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

sra

To

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

1 CC to Mr.M.C.Govindan, Advocate SR.No. 61727

O.S.A.No.238 of 2015

PUR (CO)
PSI (24.11.2015)

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