

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1969 of 2016

C.Kandasamy Gounder

.. Appellant / Petitioner /
plaintiff

-vs-

M/s Punarnava Ayurveda Private Limited
having its registered office at
No.A-2, Phase-1, Parsn Sesh Nestle
Nanjundapuram Road
Coimbatore.

... Respondent / Respondent
Defandent

Memorandum of Grounds of Civil Miscellaneous Appeal under
Order 43, Rule 1 of the Civil Procedure Code, against the order
dated 03.03.2016 made in I.A.No.475 of 2015 in O.S.No.1107 of 2008
on the file of the learned Principal District Munsif, Coimbatore.

For Appellant :: Mr.S.Rameshkumar

JUDGMENT

The appellant has come to this Court, aggrieved by the
impugned decretal order dated 3.3.2016 passed in I.A.No.475 of 2015
in O.S.No.1107 of 2008 by the learned Principal District Munsif,
Coimbatore, challenging the reasoning and the approach adopted by
the trial Court in not restoring the suit on its file, on the
ground that the trial Court ought not to have dismissed the
interlocutory application filed under Order 9, Rule 9 read with
Section 151 of CPC. The reason is that when the suit was dismissed
for default on 10.7.2012, the application under Order 9, Rule 9
read with Section 151 of CPC to restore the suit was filed on
19.7.2012 itself. But the trial Court has dismissed the said
application wrongly holding that the suit was dismissed for default
on 27.10.2010. Pausing for a while, when this Court asked the
learned counsel for the appellant whether the original order
dismissing the suit for default was filed before the Registry, he
was unaware of the original order not being filed or even applied
for. Therefore, this Court is not able to agree with the case of
the appellant that the suit was dismissed for default only on
10.7.2012. This apart, when the appellant has sought for a relief
of mandatory and permanent injunction, the trial Court has come to

the conclusion that after presenting the petition for restoration of the suit on 18.12.2012, the appellant/plaintiff has miserably failed to evince any interest to get the application numbered by bringing the fact to the notice of the Court. It has also further held that the suit was filed only with a view to harass and trouble the respondent/defendant. On this score, the trial Court has come to the conclusion that the application under Order 9, Rule 9 of CPC was not bona fide. In any event, when the original order dismissing the suit for default has not been filed, this Court is not able to find any infirmity with the impugned order. Accordingly, the civil miscellaneous appeal is dismissed.

Ss

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

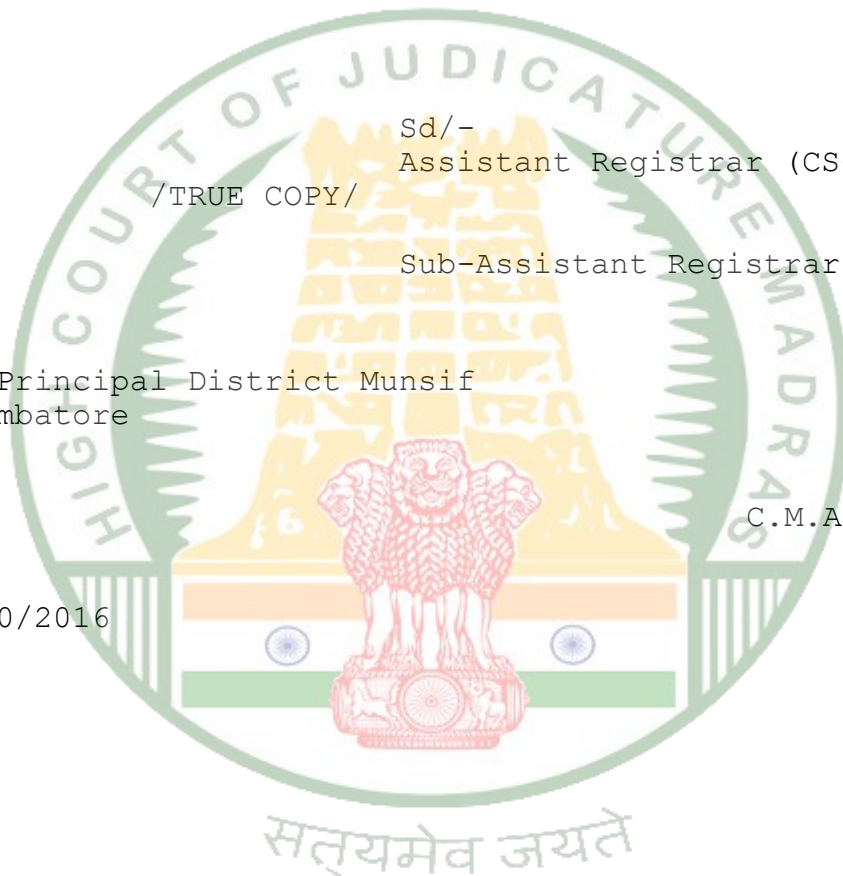
Sub-Assistant Registrar

To

1. The Principal District Munsif
Coimbatore

C.M.A.No.1969 of 2016

GR[CO]
MK:20/10/2016



WEB COPY

21.09.2016