

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 21ST DAY OF DECEMBER 2016

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.6352 of 2016

in

C.S. No.597 of 2009

Spencer & Co. Ltd.

Rep. By its Power of Attorney Agent,

M/s. Mangal Tirth Estate Ltd.,

No.769, Anna Salai, Chennai 600 002 .. Applicant/Plaintiff

Vs

Hindustan Petroleum Corporation Ltd.

By its Chief Regional Manager,

Mr.C.Ramakrishnan, Thalamuthu Natarajan Building,

No.8, Gandhi Irwin Road, Egmore,

Chennai 600 008

.. Respondent/Defendant

Application praying that this Hon'ble Court be pleased to set aside the order of the Learned Master dated 24.11.2016 in Application No.5232/2016 in C.S.No.597/2009.

This application coming on this day before this court for hearing the court made the following order:

This application is filed, challenging the order of the Master, dated 24.11.2016 in A.No.5232 of 2016, whereby the Master had dismissed the application filed to restore the copy application in CD.No.15114 of 2014, which was struck

2. It is seen from the records that the suit in CS.No.597 of 2014 had been decreed by this court, by the judgement dated 15.12.2014 and the Applicant herein, who was the 1st Defendant, had filed the said copy application in CD.15114 of 2014 for the certified copy of the judgement and decree. In the said copy application, the stamps were called for on 20.11.2015 with a direction to deposit the same on or before 27.11.2015. Since stamps were not deposited, the copy application was struck off.

3. A.No.5232 of 2016 had been filed to restore the copy application and in support of the application, an affidavit of the Clerk of the learned counsel for the Applicant/ Defendant was filed. During the hearing before the Master, the Applicant had filed A.No.6087 of 2016 with a supporting affidavit of one Mr.P.Nagarajan (MIS) Officer of the Applicant/ Defendant Corporation, giving details about the manner in which stamps were not deposited even though they were called for by the Registry. The Master, while dismissing the application in A.No.5232 of 2016, had not taken into consideration the affidavit and the judges summons in A.No.6087 of 2016, even though the same was available in the court records.

4. The Master had relied on **1989 1 MLJ 201 (G.Meenambal Vs. A.Natarajan and another)** and held that the application has to be dismissed. I disagree. The Applicant / Defendant, who had suffered a decree from this court, has lost the valuable right of appeal since the copy application filed by him has been struck off. Every party to a litigation has to be given an opportunity to litigate till the very end and this right should not be curtailed on technical grounds. Even in the judgement cited by the Master, this court had remanded the matter back to the Trial Court to decide afresh the circumstances, under which the copy application therein was struck off.

5. In this case, the Master had not given any independent reasons, except stating that the allegations in the affidavit are without materials and relevant particulars. There is always a possibility when counsel overlooked the applications like the copy applications filed before the court and rushed to the court seeking restoration of the same, the court should take an overall view of the matter. In this case, the Defendant, who had suffered a decree, has lost right to appeal and I hold that the Defendant should not be cut short in his attempts to seek justice. Taking these

consequently, the copy application in CD.15114, which was struck off on 27.11.2015 is restored and the Registry is directed to call for stamps afresh in accordance with the rules stipulating time for deposit of stamps.

Sd/.C.V.K.J

21.12.2016

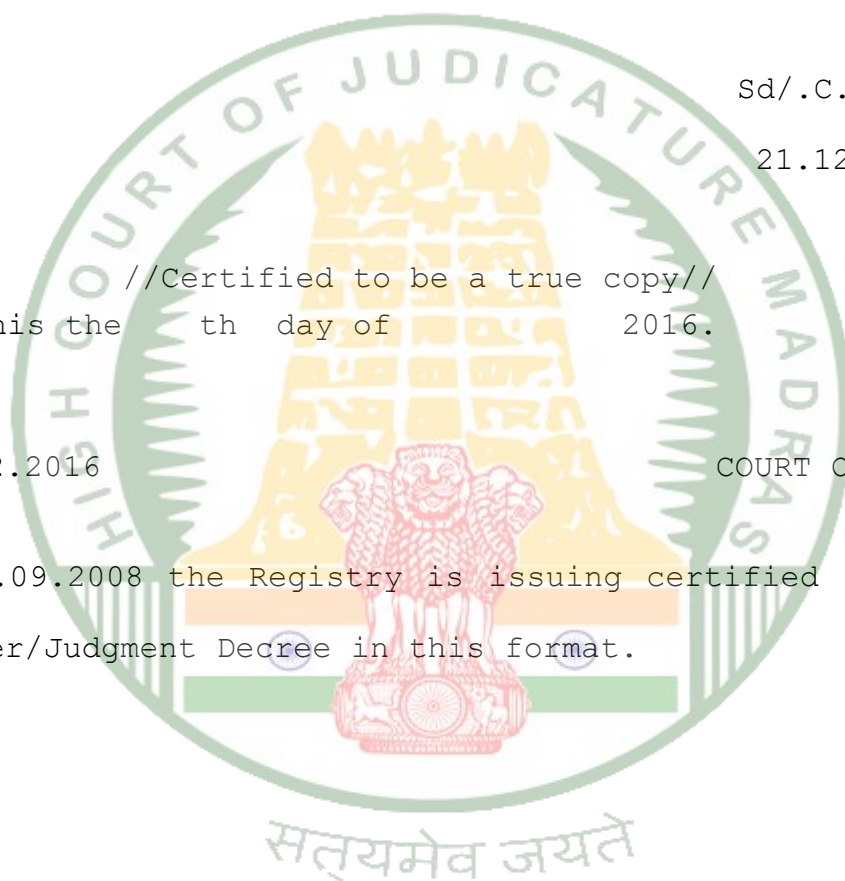
//Certified to be a true copy//

Dated this the th day of 2016.

GM/23.12.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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