

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

O.S.A.No.68 of 2016

S.Mukanchand Bothra .. Appellant

-vs-

1.Rajiv Gandhi Memorial Educational
Charitable Trust, Rep. By its
Managing Trustee, 36, Anjaneyar
Koil Street, Chennai.

2.R.Anbarasu

3.P.Mane

4.A.Kamala

5.S.Paramasivam Pillai

6.T.K.T.Nathan

7.M.Shanmuga Selvi

8.M.paramasivam

9.M/s.Udayam Engineering College
Nemili Road, Chowkkanthangal
Village, Valarapuram, Sriperumpudur
(Respondents 1, 3, 5 to 9 may be
given up)

.. Respondents

Appeal filed under Clause XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent, against the order dated 07.01.2016 made in A.No.2598 of 2014 in C.S.No.652 of 2004 on the file of original side of this Court.

For Appellant : Mr.M.Gagan Bothra

J U D G M E N T

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

The suit filed by the appellant is for recovery of money. It is the case of the appellant / original plaintiff that the recovery of money is based on promissory notes, which are not

disputed. It is also his case that the cheques issued for liquidating the liability bounced resulting in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, which proceedings have resulting in conviction. He submits that that order has been assailed by the accused, but there is no stay yet nothing has happened thereafter.

2. In the suit in question, there has been practically no progress from its institution since 2004. Unconditional leave has been granted to the original defendants 2 and 4 on 22.02.2005 and except defendants 2 and 4, all others have been proceeded ex parte, as disclosed to us. These two defendants who are contesting the suit are stated to have filed a written statement on 19.03.2005, which was returned under objection. It appears that no steps were taken to remove the objections and bring the written statement on record and it is only after a lapse of number of years, when a new counsel is alleged to have come into picture, that another written statement was filed in the year 2012. When the facts came into light, another application was filed to condone the delay.

3. In terms of the impugned order dated 07.01.2016 of the learned Single Judge, the long delay has been condoned subject to payment of costs predicated on the reasoning that the original written statement was actually filed and the case is only that the objections were not removed and there is no need of a second written statement.

4. On hearing the special attorney of the petitioner, we are of the view that it is a case of exercise of discretion by the learned Single Judge, which is not required to be interfered with. We say so as the suit has not moved an inch during this period of time and the original plaintiff cannot absolve himself of the responsibility of not taking the suit to the logical conclusion, as otherwise the factum of the written statement lying under objection would have come to light.

5. Be that as it may, interest of justice requires an end to this prolonged litigation, which is carried on for twelve years without much of a movement. We, thus, issue the following directions:

1. The costs may be paid to the appellant which he had declined earlier;
2. Replication, if any, be filed within two (2) weeks;
3. The suit be placed for framing of issues before the Court on 13.04.2016;
4. The parties to file all their documents on record at least three (3) days prior to that date;
5. The suit be listed before the Master of the Court for

admission or denial of documents on 28.04.2016;

6. The learned Master would expedite the trial in the suit considering its a 12 years old suit based on pronotes and endeavour to conclude the trial preferably within a period of six (6) months from the first date of trial; and
7. On conclusion of trial, the case will be placed before the Court for necessary directions to fix the date of final hearing.

6.The Original Side Appeal is dismissed, but with the aforesaid directions.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

[The Suit be listed
for framing of issues on 13.4.16]

+2cc to Mr.M.Gagan Bothra, Advocate sr.17626

O.S.A.No.68 of 2016

सत्यमेव जयते

rsi(CO)
srg(24/03/2016)

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