

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Seventh day of August Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE R.SUBRAMANIAN

CMA NO.1332 OF 2017

AND CMP.6993 OF 2017

IN CMP.11454 of 2017

M.A.MOHAMMED JALEEL

[APPELLANT \ PETITIONER IN CMA
NO.1332/2017 and CMP.6993/2017]

Vs

1 A.K.NAGESWARA RAO

[1ST RESPONDENT CMA
NO.1332/17 and CMP.6993/17 & CMP.11454/17]

2 BAGIRATHI

[2ND RESPONDENT CMA NO.1332/17 and
CMP.6993/17 & APPELLANT\PETITIONER
IN CMP.11454/17]

Appeal against the order dated 24.03.2017 passed by the learned principal judge, city civil court, chennai made in CMP No. 225/2017 in TR OP NO. 159/2016 dismissing the petition to restore transfer OP No.159/2016,filed under order IX, Rule 9 of CPC, which was dismissed for default on 25.01.2017(in CMA NO.1332 OF 2017)and

(ii)To grand stay of all further proceedings in OS No. 7517/2010 on the file of the XIXth Addl CCC, Chennai, (in CMP.6993 OF 2017)pending disposal of the above CMA NO.1332 OF 2017 AND;

iii) Vacate the stay granted in CMP NO. 6993 of 2017 in cma no. 1332 of 2017 on 21/04/2017 and dismiss the appeal with exemplary cost in CMP.11454/2017 IN CMA.1332/2017 respectively.

Order : These appeal coming on for hearing on today upon perusing the petitions of appeal, the order of the lower court, and the material papers in the case, and upon hearing the arguments of M/S.M.ABDUL NASEER, Advocate for the appellant\ petitioner IN CMA NO.1332/2017 and CMP.6993/2017 and M/S.S.PUGALENTHI, 2ND RESPONDENT CMA NO.1332/17 and CMP.6993/17 & APPELLANT \ PETITIONERIN CMP.11454/17 Advocate for the court made the following order:-

This civil miscellaneous appeal No.1332 of 2017 has been filed against the order dismissing C.M.P.No. 225 of 2017 in Transfer O.P.No.159 of 2016.

2.The very application in C.M.P. No.225 of 2017 was filed for restoration of Transfer O.P. No. 159 of 2016, which was dismissed for default. This appeal has been filed purportedly under Order XLIII Rule 1(c) of the Code of Civil Procedure, which reads as follows:

*1. **Appeals from Orders.**- An appeal shall lie from the following orders under the provisions of Section 104, namely:-*

*(c) an order under rule 9 of Order IX rejecting an application (**in a case open to appeal**) for an order to set aside the dismissal of a suit.*

3.The reading of the above rule makes it clear that an appeal would lie against the order dismissing the application under Order IX Rule 9 of Civil Procedure Code, only if the order that is sought to be set aside is an appealable order. An order is a transfer petition is not an appealable order. Therefore, an appeal under Order XLIII Rule 1(c) is not maintainable. Hence C.M.A. No. 1332 of 2017 is rejected as not maintainable, leaving it open to the appellant to take back the certified copies of the order filed by him along with the appeal and file a civil revision petition challenging the said order.

4.Registry is directed to return the certified copies of the order dated 24.03.2017 in C.M.P.No.225 of 2017 filed along with this Appeal to the learned counsel for the Appellant. Pending this Appeal, this Court has granted interim stay of all further proceedings in O.S.No.7517 of 2010. The said stay will continue for a period of two weeks from today (07.08.2017).

-sd/-
07/08/2017

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE REGISTRAR,
CITY CIVIL COURT,
CHENNAI.

C.C. to M/S.M.ABDUL NASEER Advocate on payment of necessary charges

Order

in

CMA NO.1332 OF 2017

AND CMP.6993 OF 2017

IN CMP.11454 of 2017

Date :07/08/2017

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
ADD 16.08.2017