

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.214 of 2015

The Madras Purasawalkam Hindu Janopakara
Saswatha Nidhi Ltd.

Rep. by its Director Secretary
No.168, Vellala Street
Purasawalkam
Chennai - 600 007

... Appellants

v.

1.R.Jayalakshmi
2.R.Selvam
3.A.Punithavathy
4.R.Krishnamurthy
5.R.Karpagavalli
6.R.Karunakaran
7.M.Menaka

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under section 104 CPC r/w
order 43 Rule 1 of CPC against the order dated 17.10.2014 passed
in C.M.P.No.49 of 2014 in A.S.No.493 of 2012 on the file of XV
Additional City Civil Court, Chennai.

For Appellant : Mr.M.Devaraj

For Respondents : No appearance

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J U D G M E N T

Consistently there is no representation on behalf of the respondents. When the matter was listed for hearing on 05.10.2017, there was no representation on behalf of the respondents, hence, the matter was adjourned to 09.10.2017. Thereafter, when the matter was listed for hearing on 09.10.2017, even on that day, there was no representation on behalf of the respondents. Hence, the matter was adjourned to

23.10.2017. Today also there is no representation for the respondents. Hence, this court heard the arguments of the appellant and disposed of the appeal by this judgment.

2. Challenging the order passed in C.M.P.No.49 of 2014 in A.S.No.493 of 2012 on the file of XV Additional Judge, City Civil Court, Chennai, the appellant, who is the 1st defendant in O.S.No.11171 of 2010, on the file of XIII Assistant Judge, City Civil Court, Chennai, has filed the above appeal.

3. The respondents filed the suit in O.S.No.11171 of 2010 for permanent injunction.

4. After contest, the Trial Court, decreed the suit. Aggrieved over the same, the appellant preferred an appeal in A.S.No.493 of 2012 on the file of XV Additional Judge, City Civil Court, Chennai.

5. When the Lower Appellate Court posted the appeal in A.S.No.493 of 2012 for arguments on 27.03.2014, neither the appellant nor his counsel was present in court, therefore, the Lower Appellate Court dismissed the appeal for default. Thereafter, on the very same day i.e. 27.03.2014 itself, the appellant filed a petition in C.M.P.No.49 of 2014 to restore the appeal to file.

6. In the affidavit filed in support of the petition in C.M.P.No.49 of 2014, the appellant has stated that when the matter was called on 27.03.2014, the counsel for the appellant could not reach the court, for the reason that she was held up in the traffic jam and when she reached the court at 11.30 a.m., she was informed that the appeal was dismissed for default. Immediately, on the very same day, the appellant has filed the petition to restore the appeal to file.

7. The respondents filed their counter disputing the averments stated in the affidavit filed in support of the petition.

8. However, the Lower Appellate Court, by order dated 13.10.2014, allowed the petition on payment of cost of Rs.1,000/- (Rupees one thousand only) by the appellant to the respondents on or before 16.10.2014 and posted the petition on 17.10.2014 for reporting compliance. Since the appellant failed to pay the cost on or before 16.10.2014, the petition was dismissed for non compliance of the conditional order. Challenging this order, the appellant has filed the present appeal.

9. On a perusal of the affidavit filed in support of the petition, it is clear that the counsel, who is appearing for the appellant was held up in the traffic, hence, she could not reach the court in time to make her submissions before the Lower Appellate Court. It is also evident that the appellant has filed the petition to restore the appeal on the very same day, i.e. on 27.03.2014 without any delay whatsoever. The Lower Appellate Court also rightly allowed the petition on payment of cost of Rs.1,000/-. Since the appellant failed to pay the cost on or before 16.10.2014, the Lower Appellate Court, dismissed the petition on 17.10.2014.

10. The learned counsel appearing for the appellant submitted that the time granted by the Lower Appellate Court is very short and hence, sought further time to comply with the conditional order passed by the Lower Appellate Court.

11. In view of the submission made by the learned counsel for the appellant, in the interest of justice, I am inclined to grant time to the appellant for paying the cost amount. Accordingly, I direct the appellant to deposit a sum of Rs.1,500/- (Rupees one thousand and five hundred only) to the credit of A.S.No.493 of 2012 on the file of XV Additional Judge, City Civil Court, Chennai, within a period of one week from the date of receipt of a copy of this order. In the event of the petitioner paying the cost amount of Rs.1,500/-, the petition in C.M.P.No.49 of 2014 in A.S.No.493 of 2012 shall stand allowed.

With these observations, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Rj

To

XV Additional Judge
City Civil Court,
Chennai.

+1cc to Mr.M.Devaraj, Advocate in sr.no.74657

C.M.A.No.214 of 2015

NR 25/10/2017