

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.53 and 54 of 2017
and C.M.P.Nos.4451 & 4452 of 2017

1. Meenakshi
2. Parvathy
3. Seethalakshmi .. Appellants in both
the appeals

Vs.

1. P.Gopinath
2. S.Kumudha .. Respondents in
O.S.A.No.53/2017

1. S.Kumudha
2. P.Gopinath .. Respondents in
O.S.A.No.54/2017

Prayer : Appeals filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent, against the Orders and Decree dated 11.01.2017 made in Original Application Nos.70 of 2017 in C.S.No.63 of 2007 and 137 of 2017 in C.S.No.63 of 2007 respectively.

For Appellants : Mr.AL.Somayaji
in both the appeals SC for Mr.M.Kamalanathan

For Respondent 1
in O.S.A.No.53/17
and Respondent 2
in O.S.A.No.54/17 : Mr.M.S.Krishnan SC,
for Mr.P.V.Arul Phazam

For Respondent 2
in O.S.A.No.53/17
and Respondent 1
in O.S.A.No.54/17 : Mr.Dinesh Kumar,
for Mr.D.Ravichander

C O M M O N J U D G E M E N T
(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. These two appeals are preferred against two separate orders of even date i.e. 11.01.2017.

1.1. By virtue of the impugned judgement and order, Application Nos.70, 71, 137 and 138 of 2017 were disposed of by the learned Single Judge.

1.2. To be noted, Application Nos.70 and 71 of 2017 were filed by the seventh defendant (Mr.P.Gopinath) in the suit, while, Application Nos.137 and 138 of 2017 were filed by the second defendant (Ms.S.Kumuda) in the suit.

1.3. The appellants herein are the original plaintiffs in the suit.

2. Application Nos.70 of 2017 and 137 of 2017 were filed seeking extension of time in filing the written statement by the respective defendants. The period of delay involved in Application No.70 of 2017 was 2062 days, while, that in Application No.137 of 2017 was 2188 days.

2.1. In so far as Application Nos.71 of 2017 and 138 of 2017 are concerned, these applications once again were filed by the aforementioned defendants for setting aside ex parte orders passed against them.

2.2. Pertinently, these orders were passed based on Application No.6670 of 2016 filed by the appellants. The second and seventh defendants were set ex parte by the Court on 19.12.2016.

3. It is in this context, appeals came to be filed by both the defendants for setting aside the said order.

4. Mr.AL.Somayaji, learned senior counsel who appears on behalf of the appellants, on instructions of Mr.M.Kamalanathan, as also, Mr.M.S.Krishnan SC, learned senior counsel, who appears on behalf of the seventh defendant on instructions of Mr.P.V.Arul Phazamnee, and Mr.Dinesh Kumar, who appears on behalf of the second defendant agree that the appeals can be disposed of based on the following directions:

(i) That the cost imposed on the defendants would be increased to Rs.1,00,000/- (Rupees one lakh only) each. To be noted, the learned Single Judge had imposed a cost of Rs.25,000/- on the seventh defendant, while qua the second defendant the cost imposed was Rs.50,000/-. As agreed, the cost which will be payable by the second and seventh defendants will stand increased to Rs.1,00,000/- (Rupees one lakh only) each.

(ii) Since, written statement is on record, the appellants will file their replication, if any, within a period of three (3) weeks from today.

(iii) The parties will exchange draft issues, immediately, upon completion of pleadings.

(iv) The matter will be placed before the learned Single Judge on 28.08.2017, for framing of issues.

(v) The appellants will file their affidavit(s) of evidence of their witnesses within a period of three (3) weeks of the issues being framed.

(vi) The matter will be placed before the learned Master on 04.10.2017, for cross-examination of the appellants' witnesses.

(vii) Immediately, upon examination of the appellants' witnesses, the respondents will file the affidavit(s) of evidence of their witnesses; a copy of which will be served on the counsel for the appellants.

(viii) For this purpose, the respondents will be given a period of two (2) weeks; the matter will be placed before the learned Master, once again, for cross-examination of the respondents' witnesses on 23.10.2017.

(ix) The entire exercise of recording evidence will be completed by the learned Master on or before 15.12.2017.

(x) Immediately, upon evidence being recorded by the learned Master, he will place the matter before the Court for appropriate directions with regard to hearing of the submissions in the suit.

5. The appeals are disposed of, in terms of the aforesaid agreed directions, as indicated above. Resultantly, pending applications shall stand closed. It is made clear that the enhanced costs will be paid to the appellants via demand draft albeit, on a pro-rata basis. The needful, in so far as, the payment of costs is concerned will be done within three (3) weeks of the receipt of a certified copy of this order.

Sd/-
सत्यमेव जयते

Assistant Registrar(CCC)

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Sub Assistant Registrar

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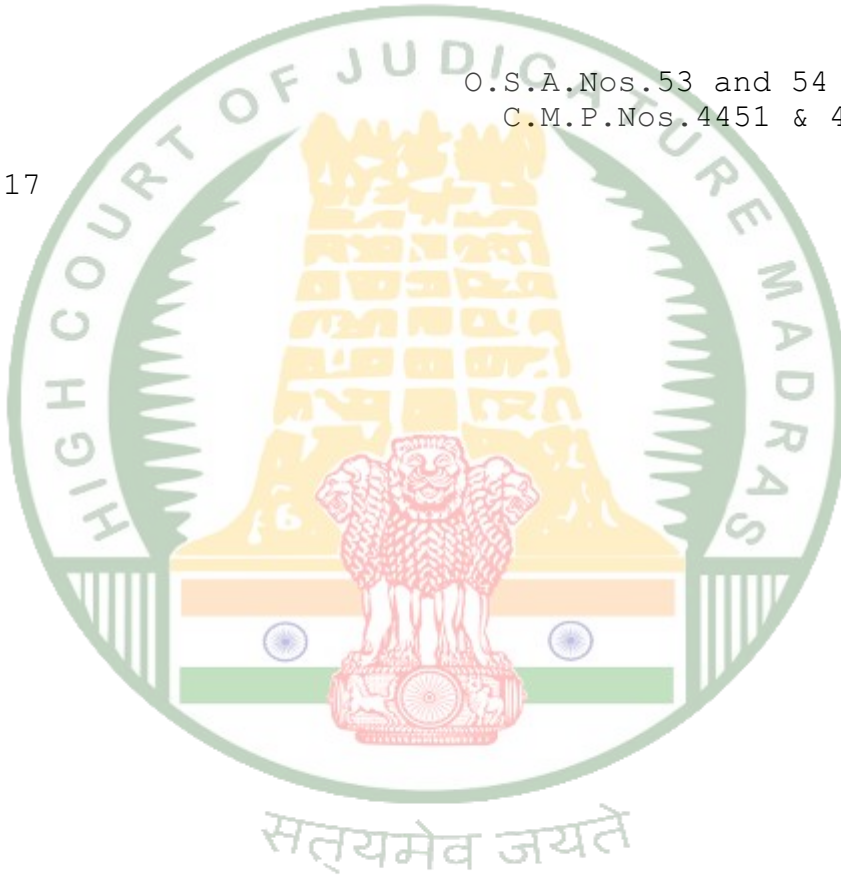
To

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

+ 1 cc to M/s. M. Kamalanathan, Advocate Sr.54136
+ 1 cc to M/s. P.V. Arul Phazam, Advocate Sr.54463

O.S.A.Nos.53 and 54 of 2017 and
C.M.P.Nos.4451 & 4452 of 2017

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