



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.428 and 429 of 2017

and

C.M.P. (MD) Nos.4537, 4538, 8778 &
8779 of 2017

M/s.Satyam Educational Trust,
Represented by its Chairman,
A.Thinakar ... Appellant in C.M.A.(MD).No.428 of 2017

1.T.Athisayaraja
2.A.Thanalekshmi
3.A.Kanimozhi ... Appellants in C.M.A.(MD).No.429 of 2017
Vs.

1.M/s.I.K.Construction represented by its
Proprietor I.Kezhson,
S/o.Issac
2.T.Athisayaraja
3.A.Thanelakshmi
4.A.Kanizmozhi ... Respondents in C.M.A.(MD).No.428 of 2017

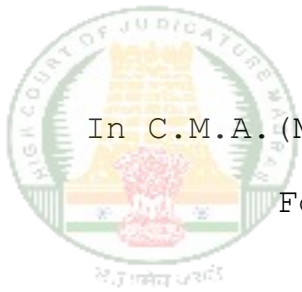
1.I.k.Construction Represented by its
Proprietor I.Kezhson,
S/o.Issac

2.M/s.Satyam Educational Trust,
Represented by its Chairman,
A.Thinakar ... Respondents in C.M.A.(MD).No.429 of 2017

Common Prayer: Appeal filed under Order 43 Rule 1 of Civil Procedure Code to set aside the order dated 22.03.2017 made in I.A.(SR). Nos.2059, 2060 of 2016 in O.S.No.124 of 2012 on the file of the District Judge, Kanyakumari at Nagercoil.

In C.M.A. (MD) .No.428 of 2017

For Appellant	: Mr.Veerakathiravan Senior Counsel For M/s. Veera Associates
For Respondents	: Mr.Mr.Puhazh Gandhi for R.1 No Appearance for R.2 to R.4



In C.M.A. (MD) .No.429 of 2017

For Appellant : Mr.Veerakathiravan
Senior Counsel
For M/s.Veera Associates

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For Respondents : Mr.Mr.Puhazh Gandhi for R.1
No Appearance for R.2

JUDGMENT

The appellants are the defendants in the suit filed by the respondent I.k.Construction. The plaintiff filed O.S.No.124 of 2012 on the file of the District Judge, Kanyakumari District at Nagercoil seeking recovery of a sum of Rs.3,10,78,000/- (Rupees Three Crores Ten Lakhs and Seventy Eight Thousand only).

2.The matter was posted for cross-examination of the plaintiff on 09.02.2016. The defendants did not get along with the matter. So they were set ex-parte. The suit was decreed on 02.04.2016. Within ten days set aside applications were filed. The first defendant filed an application for setting aside the exparte judgment and decree. The trustees also filed another application. When a defendant suffers an exparte judgment and decree, it is his statutory right to file application under Order 9 Rule 13 of C.P.C. to set aside the same. Even though an application was filed in time, the learned Trial Judge did not even number the same. Both the applications were rejected by order dated 22.03.2017. Aggrieved by the same, these civil miscellaneous appeals were filed.

3.To show their bonafides, the defendants undertook to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only). The said undertaking has since been complied with. The learned Senior Counsel appearing for the appellants/Defendants submitted that this is a highly contentious suit and that therefore in the interest of justice, the defendants must be given one more opportunity to contest the matter on merits.

3.On the other hand, Mr.Puhazh Gandhi, learned counsel appearing for the plaintiff pointed out that the defendants have been adopting delaying tactics. He also pointed out that the affidavits filed in support of the set aside applications were bereft of any particulars. No sufficient cause was set out. He wanted this Court to sustain the order impugned in these appeals.

4.I gave my anxious consideration. It is seen that the suit claim was contested and disputed. The plaintiff has also filed complaints under Section 138 of Negotiable Instruments Act against the defendants. The exparte judgment was passed on 02.04.2016. The set aside applications were filed within ten days thereafter. The Trial Court ought to have numbered the applications.

<https://hcservices.ecourts.gov.in/hcservices/>

5.I am therefore of the view that interest of justice would be



served if the defendants are granted one more opportunity to contest the suit on merits. I therefore set aside the order dated 22.03.2017 made in I.A.SR.Nos.2059 and 2060 of 2016 in O.S.No.124 of 2012 on the file of the District Judge, Kanyakumari at Nagercoil. The applications filed by the appellants herein for setting aside the exparte judgment and decree dated 02.04.2016 in O.S.No.124 of 2012 stand allowed. However, the appellants will have to be put on terms. The learned Senior Counsel appearing for the appellants submitted that the appellants shall pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) directly to the plaintiff as a condition for allowing the present Civil Miscellaneous Appeals. The appellants are given four weeks time to pay the said sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) directly to the plaintiff. The said sum can be adjusted if the suit is later decreed in favour of the plaintiff. Since a sum of Rs.5,00,000/- has already been deposited, the same is permitted to be withdrawn by the appellants. If the appellants fail to pay the said sum of Rs.25,00,000/- to the plaintiff within four weeks from today, both the Civil Miscellaneous Appeals shall stand automatically dismissed without any further reference of this Court. It is made clear that request for extension of time will not be entertained. The suit shall be heard on a day-to day basis and disposed of before January 10, 2018. The Trial Judge shall dispose of the suit uninfluenced by any of the observations made herein. The Civil Miscellaneous Appeals are allowed accordingly. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The District Judge, Kanyakumari,
Nagercoil.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.VEERA ASSOCIATES Advocate in SR. No.82599

+1cc to M/s.PUHAGH GANDHI Advocate in SR. No. 32755

TSG

JS/SV.MMS/SAR.3/25.10.2017/3P-5C

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