



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2017

Coram:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A(MD)No.850 of 2014

and

M.P(MD)No.1 of 2014

V.Ramakrishnan

.. Appellant/Petitioner/Plaintiff

-Vs-

1.s.Pandian

2.P.Vimala

3.K.Selva Vinayagam

4.R.Esakkiammal

5.Ganapathi Subramanian

6.Mallika

7.Jeyaraman

8.V.Panchavarnam

9.Vignesh Pandian,

10.Vivek Pandian

(R9 and R10 are declared as majors and 8th respondent is discharged from the guardianship, vide order of this Court made in C.M.P(MD)No.4235,4681 and 4682 of 2017 in C.M.AD)No.850 of 2014, dated 5.6.2017)

... Respondents 1-10 /Respondent-1-3,5-8 and 10-12/Defendants 1-3, 5-8 and 10-12

Prayer:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code against the fair and decretal order made in I.A.No.42 of 2013 in O.S.No.10 of 2008, dated 3.3.2014, on the file of the 1st Additional District Judge, Madurai.



For Appellant : M/s.R.Subramanian
For Respondents : M/s.C.M.Arumugam
1 and 2

WEB COPY

For Respondents : No appearance
3 to 10

JUDGMENT

Challenge in this appeal is to an order dismissing the application in I.A.No.42 of 2013 in O.S.No.10 of 2008 filed by the plaintiff seeking restoration of the suit, which was dismissed for default on 13.12.2012.

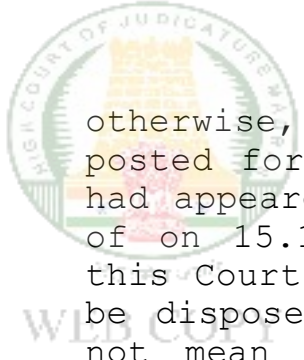
2.According to the appellant, the trial was going on in the suit. When the matter was listed for plaintiff's evidence on 13.12.2012, since he suffered diarrhoea in the morning of 13.12.2012, he could not appear on the said date. His counsel was also held up in another Court. In such circumstances, the suit came to be dismissed for default.

3.The said petition was resisted by some of the defendants in the suit, contending that the allegations are false. It was also contended that this Court had directed the trial Court to dispose of the suit on or before 15.12.2012.

4.The learned Trial Judge held that in view of the order of this Court that the suit to be disposed of on or before 15.12.2012, absence of the Petitioner on 13.12.2012 cannot be condoned. The learned Trial Judge also found fault with the appellant for not producing the Medical Certificate for diarrhoea.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials placed before this Court.

6.A reading of the entire order of the learned Ist Additional District Judge goes to show that he was influenced by the fact that this Court had directed the suit to be disposed of on or before 15.12.2012. This, in my opinion, had resulted in a faulty approach to the entire proceedings. No doubt true, when this Court directs a suit or proceedings to be disposed of within a time frame, parties must co-operate, but at the same time, the Court has also to be alive to the fact that the Courts are respected for their ability to do justice and not for their power to legalise injustice. The suit was dismissed on 13.12.2012. The present application in I.A.No.42 of 2013 in O.S.No.10 of 2008 was filed immediately on the very next day. Therefore there cannot be any mala-fides attributed to the conduct of the plaintiff. Even



otherwise, from the records, it could be seen that the suit was posted for trial on 13.12.2012. Even assuming that the plaintiff had appeared on 13.12.2012, the suit could not have been disposed of on 15.12.2012 as per the directions of this Court. Whenever this Court passes an order directing the suit or a proceeding to be disposed of by the trial Court on a particular date, it does not mean that it should be dismissed and it should never be restored.

7.I find that the learned Ist Additional District Judge had approached the matter with a sense of prejudice and found fault with the plaintiff's case. Therefore, the Civil Miscellaneous Appeal is allowed and the order of the learned I Additional District Judge in I.A.No.42 of 2013 in O.S.No.10 of 2008, dated 3.3.2014 is set aside and the suit in O.S.No.10 of 2008 is restored to file, for being disposed of in accordance with law. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

1. The Ist Additional District Judge,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.Subramanian, Advocate, SR No. 60325.

VSN

PSM/KKR/SAR1/30.06.2017/3P/4C

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and

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14.06.2017