



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Tuesday, the Fourteenth day of November, Two Thousand and Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.10285 of 2017

IN

SA No.247 of 2001

NATARAJAN

... Petitioner

Vs

1 K.LAKSHMI ANANTH

2 RAJESH SANKAR

3 PERIANNAN

4 SIVASUBRAMANIAN NADAR

... Respondent

Prayer in CMP(MD) . 10285/ 2017 :

Civil Miscellaneous Petition filed under order 41 Rule 19 read with section 151 of Civil Procedure Code praying this Hon'ble Court to set-aside the order dated 15/03/2017 and Restore the Second Appeal in S.A.No.247 of 2001.

Prayer in SA. 247/ 2001 :

Second Appeal is filed under section 100 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.47/1999 dated 31.10.2000 on the file of the Additional Sub Court, Tenkasi confirming the Judgment and decree passed in O.S.No.350/1993 dated 22.02.1999 on the file of Learned District Munsif Court, Tenkasi.

ORDER: This petition coming on for hearing on this day, upon perusing the affidavit of petitioner and the earlier order of this Court dated 15.03.2017 and the order and decree of the Court below and material papers filed, and upon hearing the arguments of Mr.D.NALLATHAMBI, Advocate for the Petitioner, and of Mr.T.S.R.VENKATRAMANA, Advocate for the Respondents, this Court made the following order:-



The petitioner has filed this petition seeking to restore the second appeal in S.A.No.247 of 2001 on the file of this Court, which was dismissed for non prosecution on 15.03.2017.

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2.The petitioner states that he preferred a suit in O.S.No.350 of 1993 on the file of the District Musiff Court, Tenkasi as against the respondents herein and the same was dismissed by judgment dated 22.02.1999. Aggrieved over the same, he preferred an appeal in A.S.No.47 of 1999, on the file of the Additional Sub Court, Tenkasi and the same was also dismissed on 31.10.2000.

3.The petitioner, aggrieved over the concurrent findings of the Courts below, has preferred the Second Appeal in S.A.247 of 2001 before the Principal seat at Chennai, which was filed by the learned counsel namely A.Sankara Subramanian. The same was transferred to Madurai Bench and the same counsel appeared in Madurai also. Subsequently, the learned counsel, Mr.A.Sankara Subramanian moved to Canada in 2009 and the case was entrusted to Mr.G.Nallathambi, learned Advocate at Madurai.

4. In these circumstances, the case was listed on 14.03.2017 without mentioning the counsel's name. But the counsel name was wrongly mentioned. Hence, this appeal was dismissed for default on 15.03.2017.

5.According to the petitioner his non-appearance is only due to the wrong mentioning of the counsel's name in the cause list. Therefore, he seeks to restore the appeal.

6.Mr.T.S.R.Venkataramana, learned counsel for the respondents is present and he has no serious objection for restoring the Second Appeal.

7.In view of the reasons stated by the petitioner and the fact <https://hcservices.ecourts.gov.in/hcservices/> that the respondents has no serious objection, this court is



inclined to restore the appeal. Accordingly, this petition is allowed.

8. List the Second Appeal on 04.12.2017.

sd/-

Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

TO

1. The Additional Sub Judge,
Tenkasi.
2. The District Munsif,
Tenkasi.
3. The Section Officer,
Judicial Posting,
Madurai Bench of Madras High Court,
Madurai.

ORDER DATE: 14.11.2017

ORDER

CMP(MD) No.10285 of 2017
IN
SA No.247 of 2001

SDS/SKN:RSK/SAR 3/23.11.2017/3P/4C