



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Friday, the Eighth day of December Two Thousand and Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.11140 of 2017

IN

SA No.948 of 2002

PANCHAZHI

... PETITIONER/APPELLANT

Vs

1 PAPPA MAASARNAM

2 ADAIKKALAM

... RESPONDENTS/RESPONDENTS

Prayer in CMP(MD) No.11140 of 2017:

This Miscellaneous Petition is filed under Section 41 Rule 19 of CPC 151 of CPC to set aside judgment and decree in S.A.No.948 of 2002 and restore the appeal which was dismissed for default on 13.11.2008.

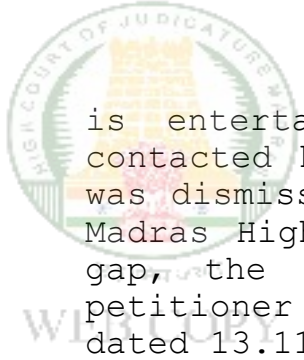
Prayer in SA No.948 of 2002:

Second Appeal filed under Section 100 of the CPC against the Judgment and Decree dated 28.08.2001 made in A.S.No.139 of 2000 on the file of the Principal District Judge, Pudukottai, confirmed the Judgment and Decree dated 16.06.2000 made in O.S.No.146 of 1995 on the file of the District Munsif, Aranthangi.

ORDER : This Miscellaneous Petition is coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.N.BALAKRISHNAN, Advocate for the petitioner, and of the Respondents not appeared either in person or by and Advocate, the court made the following order:-

The petitioner has come forward with this petition seeking to set aside the Judgement and Decree in S.A.No.948 of 2002 and restore the appeal to file, which was dismissed for default on 13.11.2008.

2.This Court already condoned the delay of 1172 days in filing the petition for restoring the second appeal in C.M.P(MD).No.3502 of 2016, which was allowed by this Court on 15.11.2017 on condition to pay a sum of Rs.1000/- to the High Court Legal Services Authority, Madurai. The petitioner states that initially he engaged an Advocate at Chennai to conduct the appeal and he was instructed to intimate him as and when the matter is listed for argument. Believing this assurance, the petitioner kept quiet. Thereafter, only when the first respondent proclaimed recently in his village that the appeal



is entertained in his favour, pained by that, the petitioner contacted his counsel at Chennai and came to know that the appeal was dismissed for default on 13.11.2008 before the Madurai Bench of Madras High Court. The petitioner states that due to communication gap, the appeal came to be dismissed on 13.11.2008. Hence the petitioner seeks to set aside the order of dismissal for default, dated 13.11.2008 and restore the second appeal on file.

3.The learned counsel for the respondent was not present today and there was no representation on his behalf.

4.Considering the fact that the second appeal was dismissed for default due to non appearance and it had occurred only due to lack of communication regarding transfer of the said case from the Principal Seat of Madras High Court to the Madurai Bench of Madras High Court, this Court is inclined to entertain the petition. Accordingly, this petition is allowed and the Second appeal which was dismissed for default on 13.11.2008 is restored on file.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar

TO

1. THE PRINCIPAL DISTRICT JUDGE, PUDUKOTTAI.
2. THE DISTRICT MUNSIF, ARANTHANGI.
3. -DO- THROUGH THE CHIEF JUDICIAL MAGISTRATE, PUDUKOTTAI.

COPY TO:-

- 1 THE SECTION OFFICER, JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI
- 2 THE SECTION OFFICER, V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

DATED : 08.12.2017

ORDER

CMP(MD) No.11140 of 2017 IN
SA No.948 of 2002

Giving direction as stated
within.