



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Thursday, the Fourteenth day of December Two Thousand and Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.9466 of 2017

IN

SA(MD) No.633 of 2014

MASANAM

... PETITIONER

Vs

NARAYANAN

... RESPONDENT

Prayer in CMP(MD) No.9466 of 2017:

Miscellaneous Petition is filed under Section 41 Rule 19 of Civil Procedure Code praying this Hon'ble Court, to restore the S.A (MD)No.633 of 2014 dismissed on 18.9.2017.

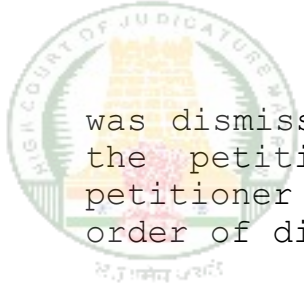
Prayer in SA(MD)No.633/2014 :

Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree of the lower appellate court dated 10.12.2013 passed in AS.No.66/2012 on the file of the Principal Subordinate Judge, Tenkasi reversing the judgment and decree of Trial Court dated 29.08.2012 passed in OS.No.57/2009 on the file of the District Munsif Court, Shengottai.

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.S.SIVAKUMAR, Advocate for the petitioner and of Mr.M.GANASAPAPATHY, Advocate for Respondent, the court made the following order:-

The petitioner have come forward with this petition seeking to set aside the order of dismissal, dated 18.09.2017 and to restore the above S.A. (MD).No.633 of 2014.

2.The petitioner states that due to personal reason he was not able to contact his earlier counsel after filing the Second Appeal and while so on 05.09.2017 he received a notice from this Court to appear on 14.09.2017. Thereafter, the petitioner sent a letter dated 09.09.2017 requesting appointment of legal aid advocate. In view of his poverty and after scrutinising his letter legal aid counsel was nominated through proceedings dated 14.09.2017 and the same was communicated to him on 15.09.2017. The Second appeal was listed on 18.09.2017 by printing the petitioner's name and the same



was dismissed for non prosecution. It is only now represented that the petitioner failed to contact her counsel in time. The petitioner has very good case on merits and seeks to set aside the order of dismissal and restore the Second Appeal.

3.The learned counsel for the respondent is present and raised no serious objection to allow the petition.

4.In such circumstances, considering the reason stated by the petitioner and the fact legal aid counsel was appointed for the petitioner and the non appearance was occurred only due to communication gap between the petitioner and his counsel, this Court is inclined to entertain this petition.

5.In the result, this petition is allowed. The Registry is directed to restore the Second Appeal on file.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

TO

1. THE PRINCIPAL SUBORDINATE JUDGE, TENKASI.
2. THE DISTRICT MUNSIF, SHENGOTTAI.
3. THE SECTION OFFICER,
V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
4. THE SECTION OFFICER,
JUDICIAL POSTING,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

DATED : 14/12/2014

ORDER

CMP(MD) No.9466 of 2017 IN
SA(MD) No.633 of 2014