

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1221 of 2018

1. Mrs.Lilian Alphonse
2. Mr.Dominic Louis
3. Ms.Dolly Louis .. Appellants/Plaintiffs/Petitioner

Vs.

1. Mr.Joseph Benedict Louis
2. The Bank Manager,
ICICI Bank Ltd.,
Besant Nagar Branch,
Chennai-600 090. .. Respondents/Defendants/Respondent

Prayer : Civil Miscellaneous Appeal is filed under Order 43 Rule 1 & 2 of C.P.C., against the order dated 16.02.2018 passed by the XVIII Additional City Civil Court, Chennai in I.A.No.186 of 2017 in O.S.No.1496 of 2016.

For Appellants : Mr.I.John Arockiadas

For Respondents: Mrs.Rekha Sivakumar [For R1]
: Mr.T.K.M.Sai Krishnan
for M/s.Sai Krishnan Associates [For R2]

JUDGMENT

1.1 The appellants herein are the plaintiffs in O.S.No.1496 of 2016. The suit is laid for declaration and partition. The 1st respondent herein is the brother of the plaintiffs. The suit is listed for trial on 21.12.2017. While so, it appears that the appellants herein have filed Tr.O.P.SR.No.74388 of 2017 for transfer of the suit from the Court before which it was then pending, to some other court. The trial court required the details of the transfer original petition. However, while the junior counsel of the appellants was in the process of collecting the said case, their senior counsel on record was stated to be in the High Court. Hence, the case went without any representation for the appellants and accordingly, the suit was dismissed for default.

1.2 On the very next day, the petitioners had filed the present application for restoration of the suit. This is resisted by the 1st respondent/1st defendant. The quintessence

of the allegation made in the counter refers to several instances when the appellants had moved the trial court with different applications, and how they all came to be dismissed, and how the appellants attempted to delay the trial with their decision to prefer appeals against those orders passed in those applications.

1.3 The trial court has gone in detail into these aspects and has reckoned the conduct of the appellants vis-a-vis the proceedings in the earlier stage in filing some applications for seeking interim order and dismissed the petition.

2. The learned counsel for the appellants would argue that the suit itself is of the year 2016 and the statute has granted the appellants necessary right to approach the court for interim orders, if a cause for seeking them is made out. Therefore, the trial court ought not to have taken exception to the appellants exercising their statutory right to seek interim reliefs. Secondly, the appellants have lost no time in preferring their application for restoration of the suit since they have filed the application on the very next day. Thirdly, the Court is not required to telescope such reasons which are extraneous to the point under consideration, and when considering the application for restoration of the suit that was dismissed for default on the ground of non-appearance of the plaintiffs, the Court is required to satisfy itself, if the cause adduced for such non-appearance was uninfluenced by any other extraneous factors. The learned counsel undertook that the plaintiffs would not hesitate to face the trial and would commence the trial without delay.

3. Resisting the said arguments, the learned counsel for the respondents submitted that, while the last leg of the arguments of the appellants may be taken as a general principle, yet the conduct of the appellants in delaying the trial should not be ignored, lest, there is a danger of litigants wearing a mask of a statutory right and abuse the judicial process.

4. After weighing rival contentions, and taking into account the nature of the suit and substantial justice involved in this case, this Court allows this Civil Miscellaneous Appeal on condition that the appellants pay a cost of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to the 1st respondent and the order dated 16.02.2018 passed by the XVIII Additional City Civil Court, Chennai in I.A.No.186 of 2017 in O.S.No.1496 of 2016 is set aside.

5. The trial court is required to list the matter for trial and the appellants are required to participate in the trial without any default. The trial court is further instructed to dispose the case within a period of six months from the date of receipt of a copy of this order.

6. Post the case for compliance on 03.08.2018.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn

To:

1. XVIII Additional City Civil Court,
Chennai

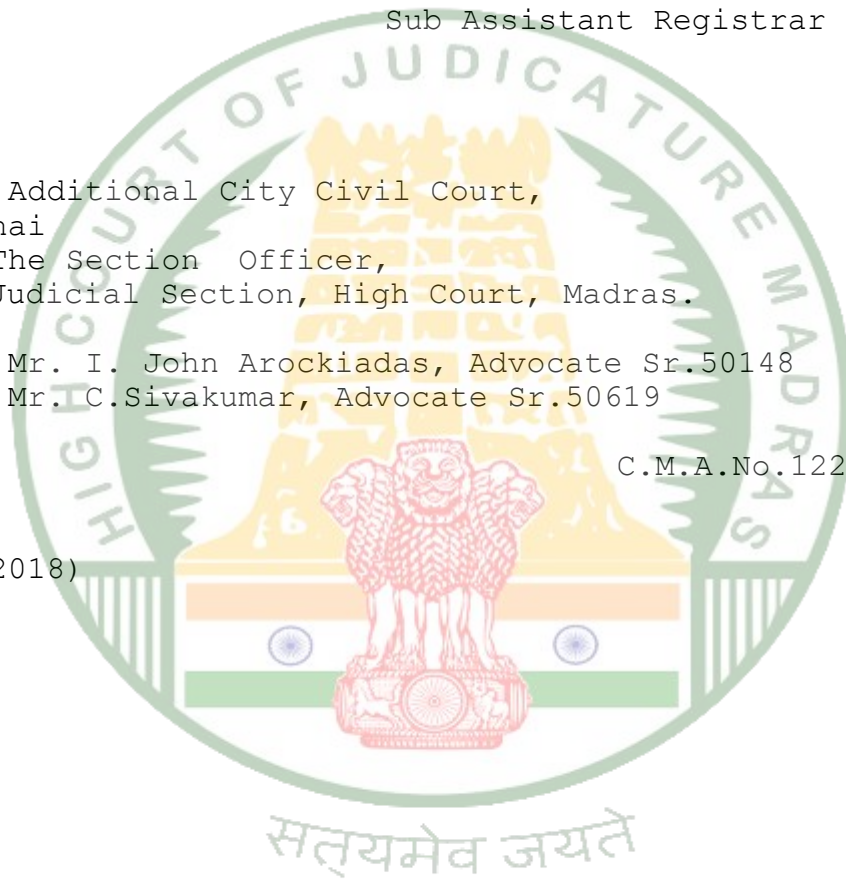
Copy to: The Section Officer,
Judicial Section, High Court, Madras.

+ 1 cc to Mr. I. John Arockiadas, Advocate Sr.50148

+ 1 cc to Mr. C.Sivakumar, Advocate Sr.50619

C.M.A.No.1221 of 2018

RSY(CO)
EU(02/08/2018)



WEB COPY