

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

ORIGINAL SIDE APPEAL NOS.152 & 153 OF 2018

- 1.Tristar Accommodations Ltd.,
Represented by its Director,
Mrs.Pandmini Rajan,
No.657, Avinashi Road,
Coimbatore 641 037.
- 2.Mrs.Padmini Rajan,
Director, Tristar Accommodations Ltd.,
No.131, Race Course Road,
Coimbatore 641 018.
- 3.Mrs.Rashmi Rajan,
Director, Tristar Accommodations Ltd.,
No.657, Avinashi Road,
Coimbatore 641 037.
- 4.Mrs. Uma Rajan

... Appellants
both appeals

- 1.I.Jeyakanthan
- 2.M.Ramakrishnan

..Respondents
in both appeals

The above Original Side Appeals are filed under Order 36 Rule 9 of O.S.Rules to set aside the order dated 19.03.2018 in A.Nos.7215 & 7214 of 2017 in A.Sr.No.27345 & 27467/2017 in A.Nos. 4406 & 3895/2016 in C.S.No.341/2016.

For Appellants
(both)

: Mr.P.H.Arvinth Pandian,
Senior Counsel
for Mr.Harishankar Mani

For Respondents
(both)

: Mr.S.Sundaresan
for Mr.S.Vaitheswaran for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

The appellants are the defendants in the suit. The suit is filed for recovery of money on a Promissory Note. The principal amount is a sum of Rs.4.5 crores.

2.In the suit summons, it was mentioned that the appellants will have to make their appearance and file a written statement stating the ground of taking defence within six weeks after their receipt. It appears the appellants made their appearance even much prior to the time limit given in the summons. Accordingly, the appeal was taken on 22.07.2016 however they did not file any application seeking leave to defend within the time prescribed. Therefore, the subsequent application filed seeking leave to defend was dismissed. In the meanwhile, there was a direction to the appellants to furnish security, which according to the learned Senior counsel, they did not comply. The learned Master after taking note of non-filing of the written statement coupled with the non contest, decreed the suit ex parte. Challenging the aforesaid two orders viz., the application filed seeking leave to defend and to set aside the ex-parte decree, two applications have been filed by the appellants to condone the delay occurred in filing applications to set aside.

3.The learned Single Judge dismissed the application by noting that the appellants have entered appearance belatedly, the delay was unexplained and the order directing the appellants to furnish security has not been complied with till date. Challenging the same, the present application is filed. To show the bonafide, on the last occasion, we directed the learned counsel to get instruction to pay a substantial amount to show bonafides as well as the learned Senior counsel who have appear. Today, the learned counsel brought Demand Drafts for a total sum of Rs.50 lakhs in the name of Registrar General, High Court Madras.

4.The learned Senior counsel appearing for the appellants would submit that an opportunity will have to be given to contest the suit on merits. Though the suit is on a promissory note, the original executor of the document is no more. Interest is sought to be added beyond the permissible limit and contrary to law. The respondent is none other than the employee of the deceased who allegedly executed the Promissory Note. Money due, if any, has already been discharged. Thus, considering the same, an opportunity will have to be given.

5.The learned counsel for the plaintiff would submit that the documents filed would show that money was actually received

by the deceased. Even recently properties worth Rs.58 crores have been sold. All the properties have been encumbered. Even assuming the appellants have time to make their appearance, the time available for filing an application seeking leave to defend was over. Thus, no interference is required.

6.Considering the submissions made we are of the view that the appellants will have to be put on terms so as to enable them to contest the suit. The length of delay is immaterial. Though the appellants did appear even before the time granted on one occasion, we are quite conscious of the fact that the appellants had also contributed to the present situation. According to the respondent, the amount due as on date is about Rs.8 crores. The suit has been filed on a Promissory Note.

7.In such view of the matter we deem it fit to allow these appeals on terms by directing the appellants to deposit the Demand Drafts mentioned above in the name of the Registrar General, High Court, Madras to the credit of the suit within one week from the date of receipt of a copy of this order. After the said exercise is done, the respondent/plaintiff are entitled to withdraw the same by filing an appropriate application before the learned Single Judge. The deposit and withdrawal are without prejudice to the contention of the parties in the suit. Accordingly, the appeals stands allowed on terms. Consequently, the applications filed stand ordered.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP

Copy to:

The Sub. Asst. Registrar,
Original Side, High Court
Madras.

+1cc to Mr.S.Sundaresan, Advocate, S.R.No.47354

+1cc to Mr.Harishankar Mani, Advocate, S.R.No.56558 (21.08.18)

OSA Nos.152 & 153 of 2018

KJ(Co)
CS/16/08/18