

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4792 and 4836 of 2015
and M.P.Nos.1 and 1 of 2015

1.The General Manager,
Southern Railway
Chennai 600 003.

2.The Chief Personal Officer,
Southern Railway,
Chennai 600 003.

.. Petitioners in
both C.R.Ps.

Vs.

1.Saroja Ammal

2.R.Rukmani

.. Respondents in
both C.R.Ps.

(R2 impleaded as party respondents
vide order of Court dated 06.04.2017
made in C.M.P.No.1843 of 2017 in
C.R.P.No.4836 of 2015)

COMMON PRAYER: Civil Revision Petitions filed under Section 115
of C.P.C to set aside the fair and decretal orders dated 13.08.2015
made in I.A.Nos.5125 and 5127 of 2015 in O.S.No.1717 of 2014 on
the file of the VI Assistant City Civil Court, Chennai.

For Petitioners : M/s.A.Sri Jayanthi

For R1 : Mr.G.Saravanan

For R2 : No appearance

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 13.08.2015 made in I.A.Nos.5125 and 5127 of 2015 in O.S.No.1717 of 2014 on the file of the VI Assistant City Civil Court, Chennai.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are the defendants 1 and 2, first respondent is the plaintiff and second respondent is the third defendant in O.S.No.1717 of 2014 on the file of the VI Assistant City Civil Court, Chennai. The first respondent filed the said suit for recovery of a sum of Rs.3,83,980/- together with interest at 24% being the death cum retirement benefits, a sum of Rs.2,07,360/- being the pensionary benefits payable on the death of Shanmuga Vadivelu, employed as a Packer at Railway Printing Press, direction to the petitioners to pay the monthly pension from the date of the plaint, for a declaration that the appointment made by the petitioners in favour of the second respondent in Southern Railway is illegal and invalid and for a mandatory injunction to cancel the appointment

made by the petitioners in favour of the second respondent. The suit summons were served on the petitioners. The petitioners did not appear and contest the suit. The suit was decreed ex parte on 16.07.2014. The first respondent filed E.P.No.155 of 2015 to execute the decree.

4.The petitioners filed present two applications in I.A.No.5125 of 2015 to condone the delay of 214 days in filing the petition to set aside the ex parte decree dated 16.07.2014 and I.A.No.5127 of 2015 for an interim stay of execution E.P.No.155 of 2015, pending disposal of the petition to set aside the ex parte judgment and decree dated 16.07.2014. According to the petitioners, the deceased Shanmuga Vadivelu, son of the first respondent was working as a Binder Grade-III in Railway Press/Royapuram under the administrative control of Senior Manager, Printing and Stationery, Press/Royapuram. On receipt of the suit summons, the same were forwarded to the Senior Manager, Printing and Stationery, Press/Royapuram for necessary follow up action. Due to pressure of work, the said summons got mixed up with other papers. The petitioners could not appear before the Court. The deceased Shanmuga Vadivelu has recorded the second respondent as his wife in the official record.

5.The first respondent has filed common counter affidavit and contended that her son Shanmuga Vadivelu died as Bachelor. The second respondent is wife of one deceased Thomas who worked in Dena Bank, Nungambakkam Branch. The second respondent has two sons and two daughters through the said Thomas. She got all the benefits from Dena Bank and is also receiving pension from the said Dena Bank on the death of her husband Thomas. The first respondent filed O.S.No.1901 of 2011 on the file of the VII Assistant City Civil Court, Chennai for permanent injunction restraining the petitioners from disbursing the terminal benefits of her son Shanmuga Vadivelu and not to give appointment to the second respondent. The said suit was decreed by the judgment and decree dated 10.01.2013. The first respondent addressed the letter and issued notice to the petitioners. In spite of receipt of notice, the petitioners paid death cum retirement benefits to the second respondent and gave appointment to the second respondent on compassionate grounds and prayed for dismissal of the applications.

6.The learned Judge considering the averments in the affidavit, counter affidavit, decree obtained by the first respondent in O.S.No.1901 of 2011, the letter and notice issued by the first

respondent intimating the said decree to the petitioners and petitioners having failed to substantiate their claim that suit summons were forwarded to the Senior Manager, Printing and Stationery, Press/Royapuram, dismissed both the applications holding that the first respondent is 75 years old and she cannot be expected to battle with the petitioners in respect of her legitimate claim and the reasons given by the petitioners are insufficient and not bonafide.

7. Against the said orders of dismissal dated 13.08.2015 made in I.A.Nos.5125 and 5127 of 2015 in O.S.No.1717 of 2014, the petitioners have come out with the present two Civil Revision Petitions.

8. Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record. Though notice has been served on the second respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

9. From the materials available on record, it is seen that the petitioners have received suit summons. According to them,

concerned official is only Senior Manager, Printing and Stationery, Press/Royapuram. The suit summons received by the petitioners were forwarded to the Senior Manager. Due to the pressure of work, he did not appear before the Court and contest the suit. The petitioners have not produced any materials to show that they have instructed the Senior Manager, Printing and Stationery, Press/Royapuram to conduct the case. Further, they have not taken any steps to find out whether the Senior Manager, Printing and Stationery, Press/Royapuram has taken steps to conduct the case. It is also pertinent to note that first respondent filed suit in O.S.No.1901 of 2011 against the petitioners for permanent injunction restraining them from disbursing the death cum retirement benefits and pension to second respondent and obtained decree by the judgment and decree dated 10.01.2013. In spite of the said decree, the petitioners have paid the death cum retirement benefits and pension to the second respondent and also given appointment to the second respondent on compassionate grounds. The petitioners were not diligent enough to prosecute the case by engaging any of the panel Advocate. The reasons given by the petitioners to condone the delay in setting aside the ex parte decree is not sufficient and valid to allow application in I.A.No.5125 of 2015.

10.The learned Judge has considered all the above facts and dismissed both the applications by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the orders of the learned Judge dated 13.08.2015 made in I.A.Nos.5125 and 5127 of 2015 in O.S.No.1717 of 2014.

11.In the result, C.R.P.No.4792 of 2015 is dismissed. In view of the dismissal of C.R.P.No.4792 of 2015, C.R.P.No.4836 of 2015 is also dismissed. It is open to the petitioners to take further proceedings against the second respondent for recovery of money and to cancel the appointment of the second respondent. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

22.03.2018

Index :: Yes/No

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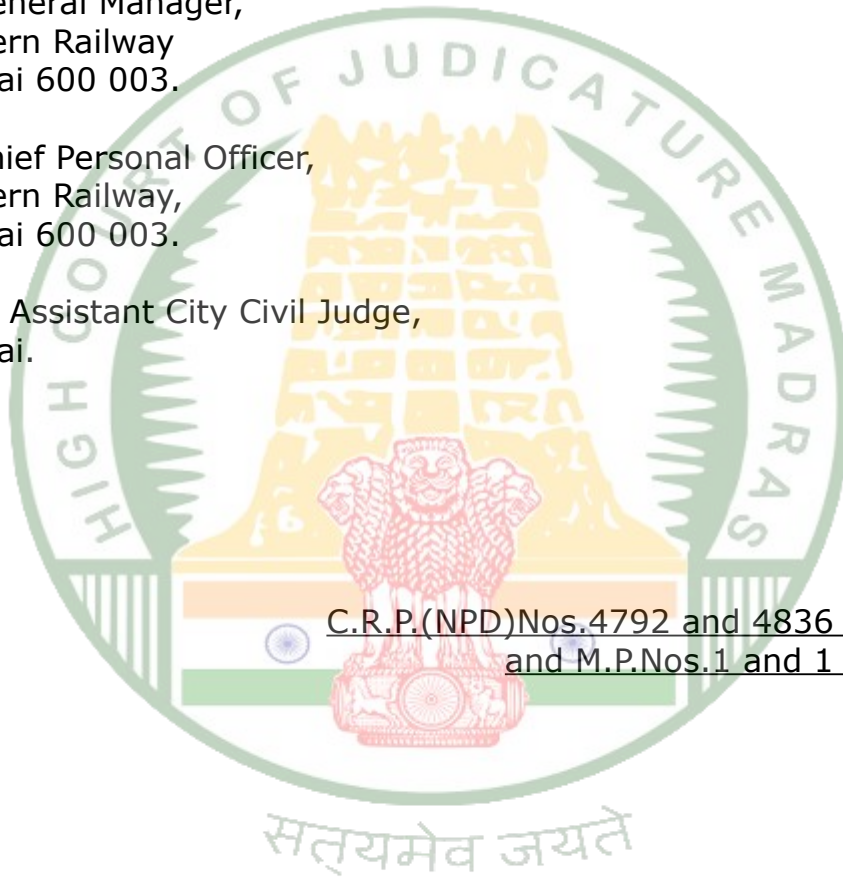
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V.M.VELUMANI,J.

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To

- 1.The General Manager,
Southern Railway
Chennai 600 003.
- 2.The Chief Personal Officer,
Southern Railway,
Chennai 600 003.
- 3.The VI Assistant City Civil Judge,
Chennai.



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