

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
THURSDAY, THE 30TH DAY OF OCTOBER 2018
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

A.Nos.6041 of 2018 in
A.Diary No.21961 of 2018
against
A.No.1453 of 2018
in
C.S.No.912 of 2016

C.S.No.912 of 2016

Mr.Venkat Raman
110, Prestige Dorchester,
103/2 Jakkur Village,
Bengaluru -560 064.

...Plaintiff

Vs.

1.Mr.N.Jayachandran,
Son of Mr.M.Nilakantan,
resding at No.11,
Venus Colony, Chennai 600 018.

2.Mrs. Nirmala Thygarajan (Deceased)
Wife of Mr.G.Thyagarajan
residing at No.6, (Old No5) Lakshmi Colony),
N.Crescent Road, T.Nagar, Chennai -600 017.

3.Mrs. Indra Subramanyam,
Wife of late mr.B.Subramanyam
residing at No.14 Rajasekharan Road,
Opp. Hotel President,
Mylapore, Chennai 600 004.

4.Mrs.Malathy Hari,
Wife of Mr.B.Hari,
residing at No.1221 Vinaya First Street,
Fourth Cross, HAL 3rd Stage,
New Thippasandra,
Bengaluru 560 075.

5.Mrs. Uma Maheswari,

Wife of Mr.Shreedhar,
residing at No.1601 Balaji Garden,
tower B opp -Indian Gymkhana,
Behind King's circle Station,
Matunga, Mumbai 400 019.

6.Mrs. Radha Ramesh,
Wife of Mr.Mohan Krishnamurthy,
residing at No.111, Ivy Lane,
Bridgewater NJ 08807,USA.

7.Nilakantan & Brothers, Constructions Private Limited,
No.2, First Floor, Gokul Towers,
No.7, C.P.Ramasamy Road,
Chennai 600 018

8.Nilakantan & Sons Private Limited,
No.2, First Floor, Gokul Towers,
No.7, C.P Ramasamy Road,
Chennai 600 018.

9.Indian Overseas Bank,
Mylapore Branch, No.177,
Luz Church Road,
Chennai 600 004.

10.G.Thyagarajan,
residing at No.6,
(Old No.5) Lakshmi colony,
N crescent Road,
T.Nagar, Chennai 600 017.

11.Anand Thyagarajan',
son of Mr.G.Thyagarajan,
residing at No.6, (Old No.5) Lakshmi colony),
N.Crescent Road, T.Nagar Chennai 600 017.

12.Sridharan Thyagarajan,
son of G.thyagarajan,
residing at No.6, (Old No.5) Lakshmi Colony,
N.Crescent Road, T.Nagar, Chennai 600 017.

Defendants

A.Nos.6041,A.No.1453 of 2018 and A.Diary No.6041 of 2018

1.Mr.N.Jayachandran

Son of Mr.M.Nilakantan,
residing at No.11,
Venus Colony Second Street,
Alwarpet, Chennai 600 018.

2.Nilakantan & Brothers Construction Private Limited,
No.2,first Floor, Gokul Towers,
No.7, C.P.Ramasamy Road,
Chennai 600 018.

3.Nilakantan & Sons Private Limited.
No.2, First Floor Gokul Towers,
No.7, C.P.ramasamy Road,
Chennai-600018

...Applicants/Applicants/Defendant 1,7 &8

Vs.

1.Mr.Venkat Raman
110, Prestige Dorchester,
103/2 Jakkur Village,
Bengaluru -560 064.

2.Mrs. Nirmala Thygarajan (Deceased)
Wife of Mr.G.Thyagarajan
residing at No.6, (Old No5) Lakshmi Colony),
N.Crescent Road,T.Nagar, Chennai -600 017.

3.Mrs. Indra Subramanyam,
Wife of late mr.B.Subramanyam
residing at No.14 Rajasekharan Road,
Opp. Hotel President,
Mylapore, Chennai 600 004.

4.Mrs.Malathy Hari,
Wife of Mr.B.Hari,
residing at No.1221 Vinaya First Street,
Fourth Cross, HAL 3rd Stage,
New Thippasandra,
Bengaluru 560 075.

5.Mrs. Uma Maheswari,
Wife of Mr.Shreedhar,
residing at No.1601 Balaji Garden,
tower B opp -Indian Gymkhana,

Behind King's circle Station,
Matunga, Mumbai 400 019.

6.Mrs. Radha Ramesh,
Wife of Mr.Mohan Krishnamurthy,
residing at No.111, Ivy Lane,
Bridgewater NJ 08807,USA.

7.Indian Overseas Bank,
Mylapore Branch, No.177,
Luz Church Road,
Chennai 600 004.

8.G.Thyagarajan,
residing at No.6,
(Old No.5) Lakshmi colony,
N crescent Road,
T.Nagar, Chennai 600 017.

9.Anand Thyagarajan',
son of Mr.G.Thyagarajan,
residing at No.6, (Old No.5) Lakshmi colony),
N.Crescent Road, T.Nagar Chennai 600 017.

10.Sridharan Thyagarajan,
son of G.thyagarajan,
residing at No.6, (Old No.5) Lakshmi Colony,
N.Crescent Road, T.Nagar, Chennai 600 017.

..Respondents/Defendants/Res.2 to 12

A.No.6041 of 2018

Application praying that this Hon'ble Court be pleased to
condone the delay of 40 days in filing the above appeal in form
of Judges Summon Application in A.D.No.21961 of 2018.

WEB COPY

This application coming on this day before this court for
hearing the court made the following order:

Application No. 6041 of 2018 has been filed by the First,
Seventh and Eighth Defendants in C.S. No. 912 of 2016, to
condone the delay of 40 days in filing the appeal (Diary No.

21961 of 2018) against the order dated 18.04.2018 passed by the Learned Master in A. No. 1453 of 2018 filed by the Plaintiff appointing an Advocate Commissioner to examine the witness, viz., M. Subramanian by 25.04.2018. After the Learned Master passed that order, a memo was filed by the Advocate Commissioner on 27.04.2018 for extension of time by one month for examining that witness, which was granted.

2. It is submitted by the Learned Counsel for the Plaintiff that on 22.05.2018, the said witness was examined-in-chief by filing proof affidavit before the Advocate Commissioner and Ex. P-1 was marked, but that witness was not cross-examined by the Learned Counsel appearing for the First, Seventh and Eighth Defendants. When the matter was called on 18.06.2018 before the Learned Master, report of the Advocate Commissioner containing the evidence of the witness was taken on record.

3. It is submitted by the Learned Counsel for the First, Seventh and Eighth Defendants that in view of the intervening vacation in May 2018, they were not in a position to file appeal against order of the Learned Master till the Court re-opened on 04.06.2018 and the delay of 40 days in filing such appeal has occurred.

4. The Learned Counsel for the Plaintiff states that the said witness, viz., M. Subramanian, has subsequently died on 04.08.2018 and the said fact has been informed to this Court on 24.08.2018 during the hearing on that date.

5. Having regard to the fact that the witness has expired and no useful purpose would be served in further prosecuting the appeal for that reason, the Learned Counsel for the First, Seventh and Eighth Defendants has filed a memo dated 30.08.2018 stating that they are not pressing the appeal as well as the application to condone the delay of 40 days in filing the appeal without prejudice to their rights to disprove the truth of the contents of the deposition of that witness in later stage of the proceedings, which is recorded. It is clarified that though it would not be possible to eschew the evidence of the said witness from the record, it is certainly open to the First, Seventh and Eighth Defendants to produce evidence to disprove the truth of the contents of the deposition made by the said witness in a manner recognised by law and that any other party relying on his evidence can also corroborate the same with such additional evidence as may be permissible in law.

6. Application No. 6041 of 2018 and Application Diary No.

21961 of 2018 are dismissed as not pressed with the aforesaid observations.

Sd/.P.D.A.J

30.08.2018

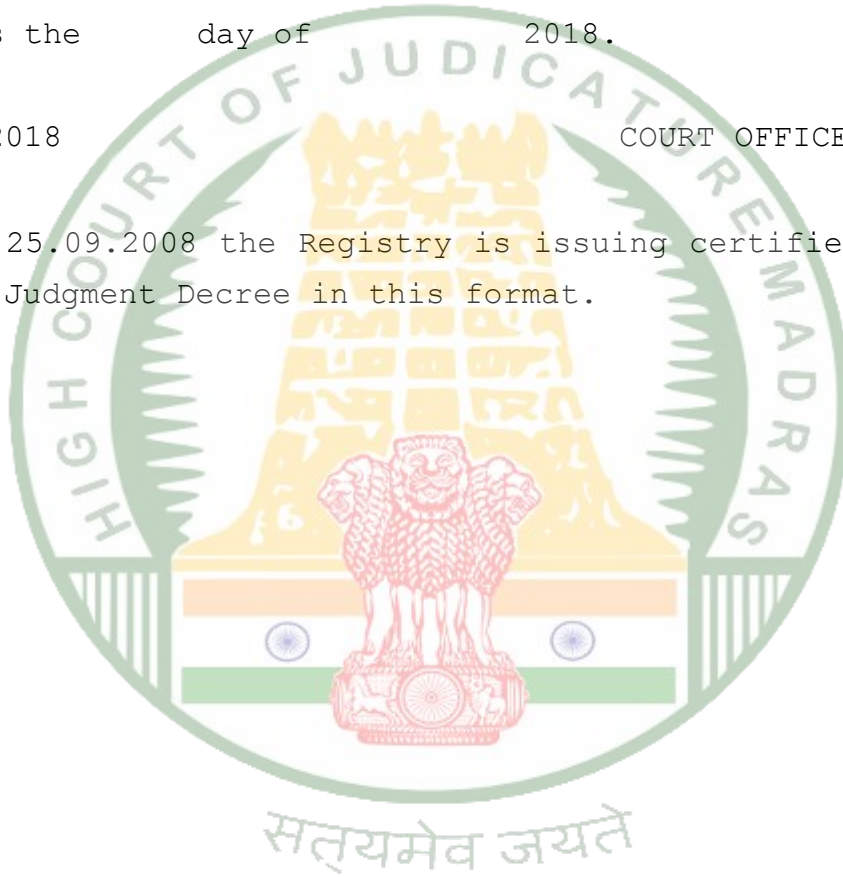
//Certified to be a true copy//

Dated this the day of 2018.

DL/09/10/2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



WEB COPY