

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.3402 of 2017
and C.M.P.Nos.21572 of 2017
and C.M.P.No.2801 of 2018

Ganesha Murugan
Partner - G.L.S.Bus Service

... Appellant

verses

1. Parvathi
2. Varatharajan
3. Jamuna
4. The Regional Transport Officer,
Salem West,
Salem-7.

... Respondents

Prayer : The Civil Miscellaneous Appeal is filed under Order 43, Rule 1 of Code of Civil Procedure, praying to set aside the order made in I.A.No.512 of 2017 in P.O.P.No.181 of 2017 on the file of the II Additional District Judge, Salem.

For Appellant : Mr.M.Palani

For Respondents : Mr.R.Jayaprakash (for R1)
Mr.Kumaralingam-No appearance
(for R2 and R3)

JUDGMENT

The relief sought for in the Civil Miscellaneous Appeals is to set aside the order made in I.A.No.512 of 2017 in P.O.P.No.181 of 2017 on the file of the II Additional District Judge, Salem.

2. The second respondent in I.A.No.512 of 2017 in P.O.P.No.181 of 2017 on the file of the learned II Additional District Judge, Salem is the appellant herein. This appeal is challenged only on the ground that without issuing notice to the appellant herein, the interim order was passed on 23.11.2017.

3. The learned counsel for the respondents made a strong objection and produced an e-Court receipt which shows that notice was served to this appellant / R2 in the Interlocutory application on 30.10.2017. But, the appellant herein has not chosen to appear before the trial Court. Therefore, after serving notice only, the trial Court has passed an order in I.A.No.512 of 2017. Hence, the appellant cannot challenge the ex-parte order by saying that no notice was served.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. On hearing the arguments of both the counsels, it is clear that there was a dispute between the parties in respect of serving notice to R2 alone in I.A.No.512 of 2017. A plain reading of the order in I.A.No.512 of 2017 P.O.P.No.181 of 2017 dated 23.11.2017 states that respondents 1, 2 and 3 remain ex-parte in the order.

6. In view of the above, considering the nature and circumstances of the case, in the interest of justice it is necessary to remand back the case and by giving fair opportunity to both parties, it is necessary to give a direction to dispose of the case within a stipulated period of time. Therefore, this Court is inclined to pass the following order:

a) This appeal is allowed by setting aside the order dated 23.11.2017 made in I.A.No.512 of 2017 in P.O.P.No.181 of 2017 on the file of the II Additional District Judge, Salem.

b) The learned II Additional District Judge, Salem is directed to dispose the I.A.No.512 of 2017 in P.O.P.No.181 of 2017, within a period of three weeks from the date of receipt of a copy of this order on day to day basis without giving any adjournments to either of the parties. Both the parties are directed to give their fullest co-operation for early disposal.

Consequently connected miscellaneous petitions are closed.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.IIAdditional District Judge,Salem.

+1cc to Mr.M.Palani, Advocate, S.R.No.87705

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.82352

C.M.A.No.3402 of 2017
& C.M.P.Nos.21572 of 2017
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VBA (CO)
GSP (03/12/2018)



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