

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 20TH DAY OF NOVEMBER 2018

THE HON'BLE DR. ANITA SUMANTH

A.No.7782 of 2018

in

C.S.No.880 of 1999

C.S.No.880 of 1999:

M/s.M.M.T.C.Ltd.,
rep. by Deputy General Manager
Chennai House
No.7, Esplanade,
Chennai-600 108.

..Plaintiff

Vs

1.M/s.Sea Snacks Exports,
Rep. by its Managing Partner,
Mohammed Azhar
90, III Street,
Karpagam Avenue,
Chennai-600 028.

2.Mohammed Azhar,
90, III Street,
Karpagam Avenue,
Chennai-600 028.

3.Roy Verghese,
90, III Street,
Karpagam Avenue,
Chennai-600 028.

4.A.P.M.Mohammed Hussain Abdul Khader (Died)
88, Saravana Perumal Mudali Street
1st Lane, Purasawalkam
Chennai 600 084.

5.K.Vinayagam
S/o.Kathavarayan
No.J-4, Venkatazalapathi Street,
Wallajah.

6.K.Ranganathan,
S/o.Kathavarayan
No.J-4, Venkatazalapathi Street,
Wallajah.

7.Anandan
S/o.Kathavarayan

No.J-4, Venkatazalapathi Street,
Wallajah.

8.K.Arumugam (Minor)
Kathavarayan
No.J-4, Venkatazalapathi Street,
Wallajah.

9.A.Kuppuswami
S/o.Annamalai Gounder,
Bhagavei Village,
Wallajah.

10.Mrs.A.P.M.Mohammed Hussain Abdul Khader, (*)
88, Saravana Perumal Mudali Street,
1st Lane, Purasawakkam, Chennai-84.

11.Mr.Alis Sultan, (**)
S/o.A.P.M.Mohammed Hussain Abdul Khader,
No.28/2, Poonappa Mudali Street,
Purasawakkam Chennai-600 007. ...Defendants

10th defendant impleaded as per (*)
order dated 28.01.2003 in
Application No.1461/01 by A.K.J.

11th defendant brought on record L.R. (**)
of deceased 4th defendant as per order
dated 11/7/07 in Application No.3311/07

A.No.7782 of 2018:

1.M.H.Mohammed Junaith Fathima, 68
W/o.Late.A.P.M.Mohameed Hussain Abdul Khader
No.88, Saravana Perumal Mudali Street,
1st Lane, Purasawakkam, Chennai-7.

2.Mr.Halithu Sultan, 48 Years
S/o.Late.A.P.M.Mohammed Hussain Abdul Khader,
Thambi Dress Centre, Fancy Readymade Show Room
No.124, Purasawakkam High Road,
Chennai-600 007.

...Applicants/Defendants No.10 &11

-Vs-

1.M/s.M.M.T.C.Ltd.,
rep. by Deputy General Manager
Chennai House
No.7, Esplanade,
Chennai-600 108.

<https://hcservices.ecourts.gov.in/hcservices/>

2.M/s.Sea Snacks Exports,
Rep. by its Managing Partner,
Mohammed Azhar
90, III Street,
Karpagam Avenue,
Chennai-600 028.

3.Mohammed Azhar,
90, III Street,
Karpagam Avenue,
Chennai-600 028.

4.Roy Verghese,
90, III Street,
Karpagam Avenue,
Chennai-600 028.

5.A.P.M.Mohammed Hussain Abdul Khader

6.K.Vinayagam
S/o.Kathavarayan
No.J-4, Venkatazalapathi Street,
Wallajah.

7.K.Ranganathan,
S/o.Kathavarayan
No.J-4, Venkatazalapathi Street,
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S/o.Kathavarayan
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No.J-4, Venkatazalapathi Street,
Wallajah.

10.A.Kuppuswami
S/o.Annamalai Gounder,
Bhagavei Village,
Wallajah.

Application praying that this Hon'ble Court be pleased to set aside the exparte decree dated 20.12.2013 in C.S.No.880/1999.

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

This application prays for a set aside of ex parte decree dated 20.12.2013 passed as against the applicants/defendants 10 & 11 in C.S.No.880 of 1999. A.No.7782 of 2018 was filed with a delay of 41 days which has been condoned by my order dated 19.09.2018 in A.No.5327 of 2018.

2. The operative portion of the order condoning the delay is extracted hereunder:

'3. The 4th defendant in suit is the husband of the first applicant and the father of the second applicant, and had passed away in 1998 even prior to the institution of the suit. The suit was however filed arraying D4 as a party. Upon coming to know of the demise of 5th defendant, steps were taken by the plaintiff to bring on record his legal heirs. However the attempt to implead the legal representatives appear to have been rather half hearted insofar as the widow has been impleaded merely as Mrs.A.P.M.Mohammed Hussain Abdul Khader, not mentioning her entire name. The name of the son was stated erroneously as Mr.Alis Sultan whereas his name is Mr.Halith Sultan.

4. Be that as it may, the widow and son were impleaded pursuant to an order of this Court dated 11.07.2007 in A.No.3311 of 2007 as 10th and 11th defendant in suit with the defects as noted previously.

5. Thus the Applicants aver that they were completely in the dark as far as the suit proceedings were concerned as the names printed in the cause list were either incomplete or incorrect.

6. In any event, and admittedly nothing has transpired in the suit from the date of their impleadment till date. It was only when the bailiff of the Court had visited the shop of the second applicant that he had come to know that the present suit has been instituted, Upon follow up, the applicant had engaged counsel who filed his vakalat on 28.04.2018 and received the plaint on 03.07.2018. Accordingly, the Applicants have filed the present application to condone the delay of 41 days to set aside the exparte decree, computing the delay from 03.07.2018 till date of filing of the present application at 41 days. The applicant states that no notice or summons was received by him either in the implead application or in the suit itself.

<https://hcservices.ecourts.gov.in/hcservices/>7. Though a detailed counter has been filed, denying all the averments in the application, no serious objection is raised to the allowing of this application for condonation of delay.

8. Quite apart from the position as to quantification of delay, I am of the view that the reasons set out seeking condonation of the delay are quite compelling.

9. In the aforesaid circumstances, the delay in filing the application seeking to set aside the exparte decree is condoned. The application is ordered.

10. Learned counsel for the applicants is directed to furnish the details of the other legal representatives forthwith in order that the learned counsel for the plaintiff may seek instructions from the plaintiffs in regard to steps to be taken for their impleadment.'

3. Though a counter has been filed to the present application, no serious objection is raised to the prayer as sought for by the applicant.

4. In the aforesaid circumstances and in the light of my order as extracted above, this application is ordered and the exparte decree dated 20.12.2013 passed as against the applicants is set aside.

5. List this matter on 12.12.2018 to enable the learned counsel for the plaintiff to file an application to bring on record the other legal representatives of deceased D4 as well as for correction of names of the present applicants in the array of parties.

Sd./- A.S.M.J.

20.11.2018

//Certified to be a true copy//

Dated this the day of 2018.

DL/04.12.2018

COURT OFFICER