

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1315 of 2018

T.L.Adhikesavalu

.. Appellant/Plaintiff

-vs-

1. K.Sundaramurthy
2. K.Ragothaman
3. K.Patharachalam

..Respondents 1 to 3/Defendants 1 to 3

Prayer: Civil Miscellaneous Appeal filed under Order 43, Rule 1 of CPC, praying to set aside the order dated 11.1.2018 in I.A.No.13906 of 2016 in O.S.No.10009 of 2010 on the file of III Additional City Civil Court, Chennai.

For Appellant : Mr.C.Thangaraju

For Respondents : Mr.R. Poornima for R1
Mr.R. Munuswamy for R2 & R3

JUDGMENT

The present Civil Miscellaneous Appeal is directed against the order passed in I.A.No.13906 of 2016 in O.S.No.10009 of 2010 dismissing the petition to set aside the dismissal for default.

2. The appellant herein is the plaintiff. The appellant, as plaintiff filed a suit in O.S.No.10009 of 2010 before the III Addl. Judge, City Civil Court against the respondents for specific performance.

3. Learned counsel for the appellant/plaintiff would submit that the plaintiff/appellant appeared before the Court on 3.8.2016. When the matter was adjourned to 4.8.2016, due to advanced age and ill-health, the plaintiff/appellant could not appear before the Court on that day, so that, the case was dismissed for default on 4.8.2016. On 16.8.2016, the plaintiff/appellant filed I.A.No.13906 of 2016 to restore the suit O.S.No.10009 of 2010 which was also dismissed on 11.1.2018.

4. Learned counsel for the respondent would submit that the conduct of the plaintiff/appellant is only with an ulterior motive to protract the proceedings and no sufficient cause has been shown. The trial court also after considering the past conduct of the appellant/plaintiff and lack of sufficient cause, has dismissed the petition on 11.1.2018.

5. Heard Mr.C.Thangaraju, learned counsel for the appellant and M/s.R.Poornima learned counsel for 1st respondent and R.Munuswamy, learned counsel for respondents 2 and 3.

6. I have considered the submissions made by both sides. Admittedly, the appellant/plaintiff was present before the Court on 3.8.2016 and the matter was adjourned to next day on 4.8.2016. Learned counsel for the appellant would submit that there was a boycott on that day, but the affidavit does not disclose any such reason and the affidavit simply says that the plaintiff/appellant was not well. Even then, the learned counsel for the plaintiff/appellant should have represented the Court about the health condition of the plaintiff and sought for an adjournment. However, it is seen that petition to restore the suit was filed immediately within limitation i.e., within a period of two weeks. In such circumstances, dismissal of the I.A.No.13906 of 2016 for want of sufficient cause does not augur well.

7. The Honourable Supreme Court has repeatedly held that instead of throwing out the case on technicalities, it shall be decided on merits in order to do substantial justice.

8. In order to give opportunity to the appellant to contest the case on merits, this court is inclined to set aside the order passed by the Court in I.A.No.13906 of 2016.

9. Learned counsel appearing for the respondents would vehemently contend that heavy costs shall be imposed on the appellant for his non appearance before the Court.

10. Considering the submissions of the learned counsel for the respondent, this Court is inclined to impose a cost of Rs.5,000/-(Rupees five thousand only) payable to Mediation and Conciliation Centre, High Court, Madras. The appellant shall make payment within a period of two weeks from the date of receipt of a copy of this Order. On such

payment, the Civil Miscellaneous Appeal shall stand allowed, in default, the appeal will be dismissed on the same day itself without any further reference to court.

11. Considering the discussions made above, in order to do substantial justice on merits, the third Additional District Judge, City Civil Court, Chennai is directed to take up the matter and complete the trial within a period of three months from the date of receipt of a copy of this order.

12. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msr

To,

1.THE III ADDITIONAL CITY CIVIL COURT, CHENNAI.

2. THE SECTION OFFICER,

VR SECTION,

HIGH COURT

MADRAS

(2 copies)

3. THE TAMIL NADU MEDIATION AND

CONCILIATION CENTRE,

HIGH COURT, CHENNAI-104

+1cc to Mr.R. Munuswamy , Advocate SR.No. 24803

+1cc to Mr.C.Thangaraju , Advocate SR.No. 24632

+1cc to Mr. R. Poornima, Advocate SR.No. 25341

A.SK(02/05/2019)

सत्यमेव जयते C.M.A.No.1315 of 2018

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