

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2626 of 2019

Gopalakrishnan

... Appellant/Plaintiff/Petitioner

-vs-

Murugesan

... Respondent/Defendant/Respondent

Prayer: Appeal filed under Order XLIII Rule 1(c) r/w. Section 104 of Civil Procedure Code against the fair and decretal order dated 14.03.2019 passed in I.A. No.506 of 2018 in O.S. No.41 of 2015 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellant : Mr.S.Senthil

JUDGMENT

The Civil Miscellaneous Appeal has been directed against the impugned decretal order dated 14.03.2019 passed in I.A. No.506 of 2018 in O.S. No.41 of 2015 by the Sessions Judge, Fast Track Mahila Court, Namakkal.

2.Learned counsel appearing for the appellant plaintiff would submit that the plaintiff/appellant filed a suit for recovery of money of Rs.10,00,000/-, in which the defendant/respondent contended that the signature and LTI found in the suit pro-note not belonged to him. However, the defendant/respondent and his wife in order to cheat the creditors, entered into a sale agreement dated 12.07.2012 with one Kandasamy. Therefore, the appellant/plaintiff moved an Application in the pending suit against the defendant/respondent seeking a prayer for declaration and injunction before the learned District Munsif, Namakkal and thereafter, a petition was filed to withdraw the suit pro-note in I.A. No.817 of 2017. Learned counsel appearing for the petitioner would further submit that when the suit was posted for hearing on 16.08.2017, the appellant/plaintiff was not ready for trial and hence, the suit was dismissed for default on 16.08.2017 and thereafter, a petition for restoration of main suit in I.A. No.305 of 2017 was filed and the same was allowed on 08.11.2017 and posted for

Trial on 15.11.2017, but on the said date, namely on 15.11.2017, as the wife of the plaintiff/appellant became unwell, he was unable to appear before the Court and hence, the suit was dismissed for default on 15.11.2017 without appreciating the reason for restoration. Therefore, learned counsel appearing for the appellant pleaded that no prejudice would be caused to the respondent, if the same is restored to file.

3. But, this Court, after perusing the reasons assigned by the learned Trial Court in the impugned fair and decretal order, is not inclined to entertain the present Civil Miscellaneous Appeal for the following reasons:

When the suit in O.S. No.41 of 2015 filed for recovery of money was posted for Trial on 15.11.2017, the appellant/plaintiff did not appear for the reason that his wife became unwell and the Trial Court dismissed the Suit as it was filed in the year 2015. Thereafter, while the appellant filing an Application for restoration of the Suit, he could not represent the above application within the time and therefore, the appellant prays for condonation of delay of 143 days in representing the Application. Taking note of the facts that the suit was previously dismissed for default, later it was restored, again the appellant not ready for Trial and therefore, the suit was dismissed on 15.11.2017, the Trial Court dismissed the said application filed for condonation of delay of 143 days in re-representation of restoration petition. Atleast pursuant to dismissal of the suit, when the same was restored back to file, the appellant should have been more careful in prosecuting the matter without allowing the matter into dismissal for default. But the appellant again allowed the suit to be dismissed for the second time that shows that the appellant does not want to proceed with the suit, but wants to keep it pending endlessly. Therefore, this Court, finding no infirmity in the fair and decretal order, is inclined to dismiss the appeal.

4. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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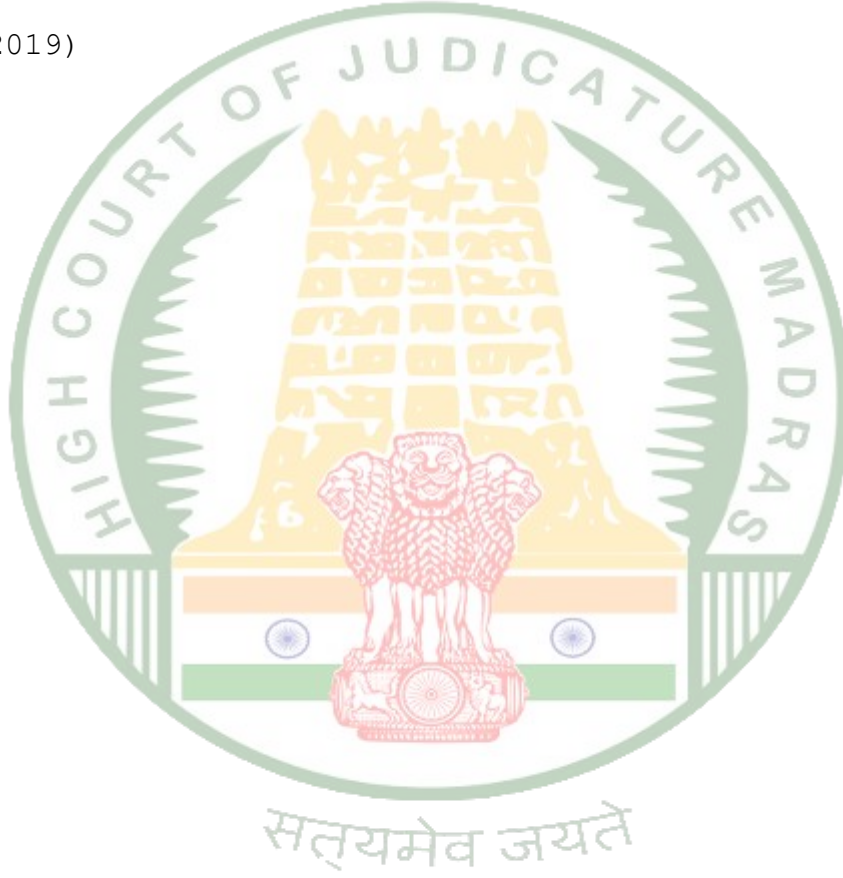
To

The Sessions Judge,
(Fast Track Mahila),
Namakkal.

+lcc to Mr.S.Senthil, Advocate, S.R.No. 52107

C.M.A. No.2626 of 2019

RSV(CO)
GN(26/08/2019)



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