

CMP No.21145 of 2019
in CMSA No.53 of 2003

V. BHAVANI SUBBAROYAN.,J.

This Civil Miscellaneous petition has been filed to set aside the order dated 17.07.2019 passed in C.M.S.A.No.53 of 2003 by this Court and to restore the same on the file of this Court.

2. Since the 1st respondent died, respondents 7 to 12 were impleaded as party respondents by an order dated 09.01.2019 in CMP Nos.11809 of 2017 to 11811 of 2017 in CMSA No.53 of 2003. The batta has been filed by the Petitioner/ Appellant which shows that he has filed only Rs.180/- as batta charges in the CMSA. Batta with petition and affidavit and stay petition due regarding R6 to R11 in CMP. Hence, this Court taking into consideration that the matter was pending from 2003 and more than 16 years have gone by, had dismissed the CMSA No.53 of 2003. However, it is seen that the petitioner has paid batta but deficiency in filing all other papers and hence "not ready in notice" was found by the Registry.

3. The petitioner is the Appellant in the Main C.M.S.A No.53 of 2003 and he had filed the same against the judgement and decree dated 09.05.2003 in A.S.No.20 of 2002 on the file of Additional District Court, Fast Track Court, Tindivanam dismissing the judgement and decree dated 04.07.1997 in E.A.No.329 of 1996 in O.S.No.42 of 1988

on the file of the Principal District Munsif Court, Tindivanam.

4. The case of the petitioner is that one Tmt.Rukumaniammal/1st respondent was died and the petitioner has filed CMP Nos.11809 of 2017 to 11811 of 2017 for condoning delay, set aside abatement and bring on record petitions. This Court by an order dated 09.01.2019 had allowed the above applications and accordingly, respondents 7 to 12 were impleaded as a party respondent and the matter was posted for hearing on 10.07.2019. On 17.07.2019, the matter was listed as "batta due regarding respondents 6 to 11" and "notice not ready regarding respondents 1 to 11" in CMSA and CMP. Though, the petitioner submitted that he has taken private notice on 17.07.2019 and batta was paid on 15.07.2019, this Court did not accept the said contention and dismissed the CMSA on the ground that the petitioner/appellant has not taken any steps to file batta for the past 16 years and the appellant has not shown any interest for payment of batta for all these years.

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5. It is seen from records that the petitioner has taken steps to implead the respondents 7 to 12 and the same was allowed by this Court on 19.01.2019. Further, he has also taken steps to serve notice through Court on 15.07.2019 along with copy of affidavit and stay petition for R6 to R11 but the sufficient copies have been kept only in main CMSA.

6. On being satisfied with the reasons stated in the affidavit filed in support of the application, this Court is inclined to allow this petition filed for restoration and the Registry is directed to send notice to respondents 7 to 12 fixing the date of hearing as 26.11.2019 with necessary batta and sufficient copies of all the petition and affidavit, immediately. Private notice is also permitted. Since the petitioner has not filed the batta and relevant documents within the time stipulated by this Court, this Court directs the petitioner to pay a sum of Rs.2,000/- (Rupees Two thousand only) to the **Red Cross Society, 1st Floor, Red Cross Road, Egmore, Chennai 600 008**, as cost.

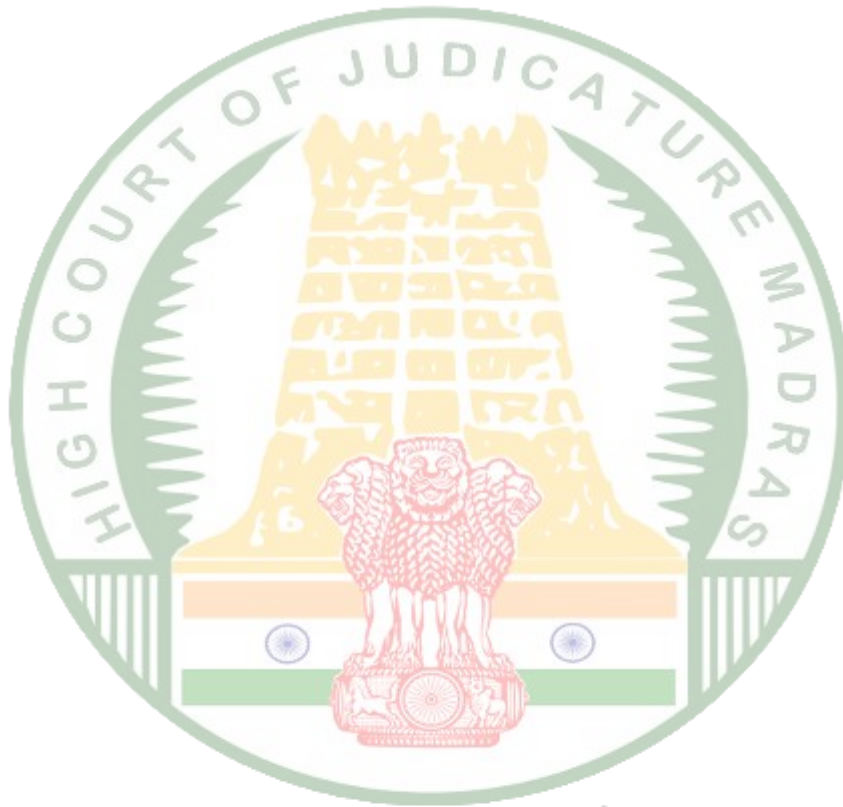
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