

A.No.8836 of 2018
in C.S.No.468 of 2000

P.T. ASHA, J.

The above application is taken out to dismiss the suit C.S.No.468 of 2000 for non compliance of the provisions of Section 27 of the Code of Civil Procedure.

2.The sum and substance of the application is that though the suit was numbered as early as in the year 2000, 17 years later, the summons was filed on 20.12.2017 and served on the defendant in January 2018. In view of the inordinate delay, the suit is liable to be dismissed as it runs contra to the provisions of Section 27 which enjoins the plaintiff to issue summons to the defendant to appear and answer the claim on such day not beyond the period of 30 days from the date of the institution of the suit.

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3.The counter came to be filed by the respondent/plaintiff contending that the application was not maintainable since the plaintiff

has along with the Plaint filed sufficient copies of the pleadings, typedset of papers along with batta in compliance with the provisions of Order 4 Rule 2 of the Madras High Court Original Side Rules which applies to the suit in question. The respondent would further state that it is the Registry who has to take steps to serve the respondent. He would submit that after the suit was numbered it was listed in the year 2003 and since there was no appearance on behalf of the applicant/defendant the respondent had taken fresh batta and once again, when the matter was listed in the year 2017, fresh notice was taken to the applicant on 20.12.2017. This summons having been received by the applicant/defendant he has entered appearance in the matter.

4.The learned counsel for the applicant would argue that since there is a violation of the terms of Section 27 of the Code of Civil Procedure the suit deserves to be dismissed. He would further argue that Order 14 Rule 2 of the Original Side Rules also makes it

mandatory that the copy of the summons should be served on the opposite party or its Advocate within two clear dates or not later than two clear dates before the return date. The provisions of Order 14 Rule 2 has also not been complied with and therefore, he seeks for dismissal of the application.

5.Per contra, Mr.Sanjay Mohan, learned counsel for the respondent would submit that Section 27 of the Code of Civil Procedure would not apply as the suit has been filed before this Court which is governed by the Original Side Rules. He would bring it to the notice of this Court that after 2000, when the matter came up in the year 2003 steps were taken and thereafter, the matter was listed before this Court only in the year 2017. Once fresh notice was ordered to the defendant which notice has been taken by them. Therefore, he would submit that the application lacks merits and deserves to be dismissed.

6.Heard the learned counsels appearing on either side and perused the papers.

7.As argued by the learned counsel for the defendant, Section 27 of the Code of Civil Procedure, is not applicable to the instant suit. Further, even assuming that Section 27 would apply, the Section does not provide for dismissal of the suit for failure to take summons. The provision of Order 5 provides for issue and service of summons. Even the provisions of this Order does not contemplate the dismissal of a suit for failure to effect summons.

8.Likewise, the provisions of Order 4 of the Original Side Rules relates to the issue of summons. Order 4 Rule 2 only contemplates that the plaintiff along with Plaint should provide sufficient number of copies, summons in duplicate along with the necessary applications for summons of service only parties concerned. Once the Plaint is admitted the Registrar or such other Officer of the Court shall issue

summons to the defendant to appear before the Court. Therefore, on the filing of the summons as contemplated under Order 4 Rule 2 there is a sufficient compliance of steps to serve the defendant.

9.In the instant case, along with the suit necessary batta with requisite copies has been filed and it is only in the year 2017 after fresh notice was ordered the defendant was served.

10.In view of the above, there is no merit in the application and the same is dismissed. The defendant is directed to file fresh Written Statement on or before 03.03.2021.

Post this matter on 04.03.2021.

10.02.2021

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