

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA. Nos.2433 and 2434 of 2018

P.Kandasamy ... Appellant in both the appeals

Vs.

Radhakrishnan (Died)

1. Sathiya

2. R.Kamala ... Respondents in both the appeals

COMMON PRAYER: Civil Miscellaneous Appeals filed under Order XLIII, Rule 1 (c) of Code of Civil Procedure, to set aside the fair and decretal order dated 26.06.2018 made in I.A.Nos.59 and 60 of 2018 respectively in O.S.No.173 of 2012 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellant

In both the appeals : Mr.C.E.Pratap

For Respondent

In both the appeals : Mr.J.Ramakrishnan [for RR1 &2]

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed seeking to set aside the fair and decretal order dated 26.06.2018 made in I.A.Nos.59 and 60 of 2018 in O.S.No.173 of 2012 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal, respectively.

2. The suit is for specific performance. The plaintiff is the appellant herein. The suit was posted on 08.01.2018 for notice of hearing in I.A.No.400 of 2017. Even though, the appellant has served notice on the other side, he has not filed proof of service before the Court. On 08.01.2018, I.A.No.400 of 2017 and the suit were dismissed for default for non-appearance of appellant. The appellant has filed IA.Nos.59 and 60 of 2018 to restore the same on 12.01.2018. However, the trial Court

dismissed the same, finding that the appellant is not interested in contesting the suit. Aggrieved over the same, the appellant is before this Court.

3. Heard both sides.

4. As ordered by the trial Court, the appellant served notice on the other side on 08.01.2018, however due to viral fever, the counsel for appellant could not appear before the Court. Pleadings does not disclose any deliberate intention on the side of the appellant to drag on the proceedings. When an application is filed under Order 9 Rule 9 of C.P.C, showing sufficient cause, normally it shall be entertained and if circumstances warrant the court the Court may impose compensatory costs. In the instant case within a period of 4 days, the appellant has filed a petition to restore. The conduct of the appellant appears to be bonafide.

5. In my considered opinion, the matter should have been decided on merits, rather than being dismissed on technicalities. The Hon'ble Supreme Court has repeatedly held that substantial justice has to be rendered than rejecting the matter on technicalities. In order to give an opportunity to the appellant/plaintiff, this Court is inclined to set aside the order passed in IA.Nos.59 and 60 of 2018 in O.S.No.173 of 2012 dated 26.06.2018 and restore the suit to the file of trial Court.

6. The suit is of the year 2012. Considering the long pendency of the matter, this Court directs both the parties to co-operate with the trial Court for speedy disposal of the case and the trial Court is directed to complete the case within a period of six months from the date of receipt of a copy of this order.

7. These Civil Miscellaneous Petitions are disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

bri

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

+2 cc to Mr.J.Ramakrishnan, Advocate, Sr.No. 26367,26368
+1 cc to Mr.C.E.Pratap, Advocate, Sr.No. 24909

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CSL/27.06.2019



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