



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

Wednesday, the Nineteenth day of June Two Thousand Nineteen

WEB COPY

PRESENT

The Hon'ble Mr. Justice R. SURESH KUMAR

WMP (MD) No.8031 of 2019
in
WP (MD) No.11798 of 2009

T. JEBAGNANA ABRAHAM
S/O. T. THANGA DURAI,
NO. 4/41 CALDWELL COLONY,
2ND STREET,
THOOTHUKUDI -8.

... Petitioner/Petitioner

Vs

THE ESTATE OFFICER,
THOOTHUKUDI PORT TRUST,
THOOTHUKUDI.

... Respondent/Respondent

Prayer in WMP (MD). No.8031 of 2019 :-

Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, to set aside the dismiss for default order dated 13.03.19 passed in WP (MD) No. 11798 of 2009 and restore the same and thus render justice.

Prayer in WP (MD). 11798/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to order dated 18/09/09 and passed in CMA.No. 33/06 by the Honourable Principal District Judge, Thoothukudi confirming the order of eviction vide proceedings No. E(c)-56/19/06-EST/D4289 dated 17/10/06 by the respondent and quash the same.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.G.PRABHU RAJADURAI, Advocate for the Petitioner and Respondent have not appeared either in person or by an Advocate, this Court made the following order:



This writ miscellaneous petition in WMP(MD) No.8031 of 2019 has been filed with a prayer to restore the writ petition in W.P. (MD) No.11798 of 2009, which was dismissed for default on 13.03.2019.

2.I have heard the learned counsel appearing for the petitioner.

3.On 13.03.2019, the learned Judge has passed the following order in W.P.(MD) No.11798 of 2009:

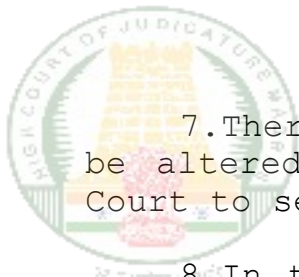
"The instant writ petition was listed under the caption "for dismissal" today. During the last three occasions, the petitioner has been seeking time to argue the matter. Even, today, the learned counsel for the petitioner seeks time to argue the matter.

2.The matter relates to the year 2009. No useful purpose will be served in keeping this writ petition pending and it can be inferred that the petitioner is not interested in prosecuting the case. Accordingly, the Writ Petition is dismissed for default. No costs."

4.On perusal of the said order passed by this Court, it became clear that number of hearings though the writ petition was listed for arguments, the learned counsel appearing for the petitioner took adjournment one after another. After three adjournments, when the matter was listed on 13.03.2019 for dismissal, even on that day also, the learned counsel for the petitioner was not ready to get on with the case. Therefore, recording the same, the learned Judge has dismissed the writ petition for default.

5.Today, the learned counsel for the petitioner submits that the petitioner has been in Tuticorin and in order to get instructions, when he has contacted the petitioner, he was not able to get the instructions and that is the reason why all those hearings, when the case was listed, he was not in a position to get on with the case.

6.Be that as it may, if it was one chance given to the petitioner, for which, the petitioner was not able to argue the case, we can understand the genuine difficulty faced by the counsel or the genuine difficulty of the litigant i.e. the petitioner herein to give instructions to the counsel. When this Court listed the matter for thrice and even at the various times also, the counsel for the petitioner was not ready to get on with the case, there is no meaning in keeping the case that too the writ petition of the year 2009. Recording all these developments, the learned Judge has dismissed the case for default.



7. Therefore, I am of the view that, the said decision need not be altered as there is no plausible reason available before this Court to set aside the order and restore the writ petition.

8. In that view of the matter, this writ miscellaneous petition deserves to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

TO

THE ESTATE OFFICER,
THOOTHUKUDI PORT TRUST, THOOTHUKUDI.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 19/06/2019
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ORDER

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WMP (MD) No.8031 of 2019
in
WP (MD) No.11798 of 2009

Giving direction and etc.
as stated within.

ES/11.07.2019/3P/3C