

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

REV. APPLN. NO. 57 OF 2020

K.Mahalingam

.. Petitioner

- Vs -

1. S.Viswanathan

2. The Chairman
Chennai Port Trust
Chennai – 01.

3. The Deputy Chairman
Chennai Port Trust
Chennai – 01.

4. The Secretary
Chennai Port Trust
Chennai – 01.

5. The Chief Mechanical Engineer
Chennai Port Trust
Chennai – 01.

.. Respondents

Review Application filed under Order 47 Rule 1 of the Code of Civil

Procedure against the order dated 10.7.20 passed in W.P. No.30413/2013.

For Petitioner : Mr. M.Radhakrishnan

For Respondents : Mr. K.Raja for R-1
Mr. P.M.Subramaniam for RR-2 to 5

ORDER

The present review application has been filed by the petitioner/5th respondent in the writ petition on the ground of an error apparent on the face of the record.

2. It is submitted by the learned counsel for the petitioner that while allowing the petition filed by the writ petitioner/1st respondent herein, this Court had observed that though notice has been issued to the 5th respondent/the petitioner herein, the 5th respondent has neither chosen to appear in person nor through counsel, which is an error apparent on the face of the record. It is the submission of the learned counsel for the petitioner herein that no notice was served on the petitioner herein and, therefore, without notice and hearing the petitioner herein, against whom an order has been passed, deserves to be reviewed.

3. Per contra, learned counsel appearing for the 1st respondent herein/the writ petitioner, vehemently contended that while this Court ordered

impleadment of the 5th respondent and amended the prayer, notice was ordered to the petitioner herein and, therefore, this review application deserves to be dismissed. However, it is to be pointed out that the learned counsel for the 1st respondent herein is not able to place any material before this Court as to notice having been served on the petitioner herein.

4. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

5. Though no material has been placed by the learned counsel for the 1st respondent herein supporting his stand that notice was served on the petitioner herein, however, in order to find out the actual position as to whether notice was indeed served on the petitioner, this Court embarked on finding out as to whether notice was served on the petitioner herein.

6. A perusal of the materials on record, more especially, the petition and the connected order relating to the implead petition, it is seen that this Court, vide order dated 3.12.2014, this Court had allowed the petitions in M.P. No.1 of

2014 seeking impleadment and M.P. No.2 of 2014 seeking amendment of prayer. However, curiously, no notice has been ordered by this Court in the above petitions. Though it is the stand of the 1st respondent that notice is *sine qua non* in a case where impleadment has been ordered, however, it is to be pointed out that though notice is *sine qua non* to ordering the impleadment of a party as respondent, however, without an explicit order passed by this Court ordering notice, construing that notice has been ordered and issuing notice on the party by the Registry of this Court would only lead to the usurping of the power of the Court by the Registry, which is highly impermissible and condemnable. In such a backdrop, there being no order for notice to the newly impleaded respondent, viz., the petitioner herein, the Registry of this Court had not sent notice to the petitioner herein. Though technically impleadment entails notice on the impleaded respondent, but in the absence of notice having been served on the newly impleaded respondent in the writ petition, viz., the petitioner herein, the stand of the petitioner herein that there is an error apparent on the face of the record deserves to be accepted.

7. In such view of the matter, the order dated 10.7.20 passed in W.P.

No.30413/2013 is hereby recalled and the review application is allowed and the

writ petition is restored back to file.

8. On a query from the Court as to whether the learned counsel for the petitioner would take notice for the petitioner herein, as 5th respondent in the writ petition, however, it is the submission of the learned counsel for the petitioner that he has instructions only to appear in the review application and he has no instructions to appear in the writ petition.

9. The grievance raised by the petitioner herein to have the writ petition restored back to file is on the ground that no notice was served on him. True it is that the petitioner herein is justified in his prayer to have the writ petition restored for want of service of notice. However, once the petitioner herein has moved this Court by filing the review application to have the order recalled, the petitioner, not only is aware of the case before this Court, but to show his bona fides, ought to have pleaded before this Court to have the matter heard on merits by allowing the petitioner to file a counter and agitate the issue. However, as stated above, the query emanated from the Court resulted in a negative answer from the counsel for the petitioner herein stating that he has been instructed to appear only in the review application and no further. The above pleadment

clearly reveals that the intention of the petitioner herein is only to have the order recalled and not to contest the writ petition, which is nothing but a diversionary tactic adopted by the petitioner to stall and delay the hearing of the writ petition.

10. In such a scenario, while this Court has recalled the order dated 10.7.20 and restored the writ petition back to file, however, this Court is of the considered view that once the pending *lis* has come to the knowledge of the petitioner herein, who has come before this Court by filing the review application, it is not necessary for this Court to issue any further notice in the writ petition to the petitioner herein, as notice is issued only for the purpose of making the party aware of the case before this Court. Once the petitioner herein has come before this Court, it is deemed that the petitioner herein is aware of the case before this Court and, therefore, further notice on the petitioner herein is not required.

11. In such circumstances, Registry is directed to list the writ petition for hearing on 5th October, 2020. The petitioner herein, who is the 5th respondent in the writ petition shall file his counter, if any, by then. The petitioner in the writ petition/the 1st respondent herein, is directed to serve the requisite papers on

the petitioner herein by then.

12. It is brought to the notice of this Court by the learned counsel for the parties that pursuant to the order of this Court dated 10.7.2020 in W.P. No.30413/2013, the 5th respondent has been reverted to the original post. The said submission is recorded. Needless to say, that it is open to the concerned authorities to take a decision in the matter, which would always be subject to the outcome of the orders to be passed in the writ petition.

13. The review application is allowed with the aforesaid observations and directions and the writ petition in W.P. No.30413/2013 is restored back to file. List the writ petition for final hearing on 5th October, 2020.

18.09.2020

Index : Yes/No

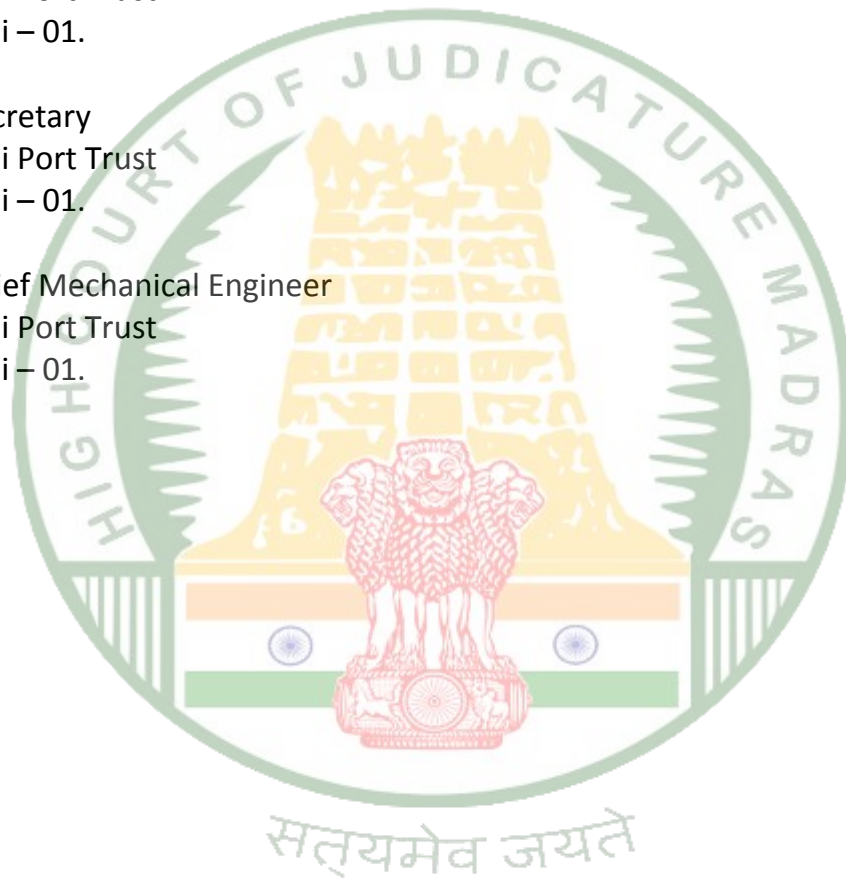
Internet : Yes/No

GLN

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To

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Chennai Port Trust
Chennai – 01.
2. The Deputy Chairman
Chennai Port Trust
Chennai – 01.
3. The Secretary
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M.DHANDAPANI, J.

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