

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2020

DELIVERED ON: 23.11.2020

CORAM:

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.9495 of 2019
in C.S.No.675 of 2005

Century Papers Ltd.,
Stone, 30, N.R.K.R Road,
Sivakasi – 623 123,
Represented through it's Director,
Mr.Nanratan Mal Daga

...Applicant

vs.

1.The Coronation Litho Works Ltd.,
Asha Mansion, II Floor,
58-1, Montieth Road,
Egmore, Chennai – 600 008.

2.The Coronation Litho Works,
Represented by its Partners-
e) D.G Dharmar
f) Gnanagiri Ganeshan
g) G.D Natraj Prabhu
h) Gnanagiri Balaji
D.G.Dharmar (Deceased)
Gnanagiri Ganeshan
Mr.G.D Natraj Prabhu (Deceased)

3.Mr.Gnanagiri Balaji

4.Mr.Gnanagiri Babu

5.Mrs.H.S.Vishalakshi

6.Mrs.R Gowri,

7.Mrs.Maheswari

8.GV.Karthik

9.G.V.Sundar

10.G.V.Giridharan

Respondents/Defendants

...

Prayer: Application filed to condone the delay of 2355 days in filing the petition to set aside the abatement caused due to the death of the 4th defendant in C.S.No.675 of 2005.

For Applicant : Ms.Aishwarya S.Nathan
for M/s.Srinath Sridevan

For Defendants : Mr.A.R.Karunakaran for D8 to D10

ORDER

Application has been filed to condone the delay of 2355 days in filing the application to bring on record the legal representatives of the deceased Gnanagiri Ganeshan/fourth defendant.

2.It had been stated in the affidavit filed in support of the said application that the applicant came to know only in the year 2019 about the death of Gnanagiri Ganeshan/fourth defendant and immediately thereafter, had filed the said application. It had also been stated that the proposed legal representatives of the deceased are necessary parties to the suit and the plaintiff would be put to much hardship if the application is not allowed.

3.Notice was directed to the proposed respondents.

4.A counter has been filed. In the counter affidavit, it had been stated that the statement that the plaintiff came to know only in the year 2019 the death of the fourth defendant is totally false. It had been stated there was an other suit pending in O.S.No.25 of 2014 before the Principal District Court, Virudhunagar filed by M/s.Ridhikaran Daga (HUF) represented by Nauratanmal Daga against the defendants herein. As against an interlocutory order passed, a Civil Revision Petition had been filed before the Madurai Bench of Madras High Court. In the year 2014, in said CRP, an application had been filed to bring on record the legal representatives of the deceased 3rd respondent therein Gnanagiri Ganeshan (the 4th defendant herein). The plaintiff in

the present suit is also represented by Nauratanmal Daga, and therefore the claim that the plaintiff came to know about the death of Gnanagiri Ganeshan only in the year 2019 was false.

5.It had been stated that the proposed respondents are the grandsons through the daughter of the deceased 4th defendant, Gnanagiri Ganeshan. Their mother had pre-deceased her father. It was stated that even in the year 2014, the plaintiff herein had knowledge about the death of Ganagiri Ganeshan/fourth defendant and the fact that the present proposed respondents are the legal representatives.

6.It had been therefore stated that the application lacks bonafide and should be dismissed.

7.A rejoinder had been filed in which it had once again been reiterated that the deponent of the affidavit had knowledge only in the year 2019 regarding the death of the 4th defendant. It had been stated Nauratanmal Daga is in advanced age and the deponent of the affidavit is handling the matter.

8.Heard Ms.Aishwarya S.Nathan, learned counsel for Mr.Srinath Sridevan, learned counsel for the applicant/plaintiff and Mr.A.R.Karunakaran, learned counsel for the respondents 8 to 10.

9.Clause 120 of the Limitation Act, 1963 is as follows:

Under the Code of Civil Procedure, 1908, to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party. It had been provided that period of limitation is 90 days from the date of death of the plaintiff, appellant, defendant or respondent, as the case may be.

10.It is seen from a reading of the counter affidavit that the death of the deceased 4th defendant had come to the knowledge of Mr.Nauratanmal Daga, who represents the plaintiff, who had signed and verified the plaint even in the year 2014.

11.An affidavit had been filed in support of M.P.Nos.1 to 3 of 2014 in Civil Revision Petition (PD) No.2168 of 2012 before the Madurai Bench of Madras High Court. In the affidavit Nauratanmal Daga representing the Revision Petitioner had stated that the fourth defendant who was the third respondent in the Civil Revision Petition, Gnanagiri Ganeshan had died on 10.03.2014 leaving behind the respondents herein as his legal representatives. It was stated that this information was received on 11.10.2014.

12.In the affidavit filed in support of the present application, Siddharth Daga the son of Nauratanmal Daga has stated that the fourth defendant, Gnanagiri Ganeshan had passed away on 10.03.2014, but that he came to know about the same only when a memo was filed by the counsel appearing for the 7 - 8th defendants. He stated that after receiving the details of the legal heirs, he had filed the present application.

13.However, it is seen from the plaint that Nauratanmal Daga had verified the plaint and still represents the plaintiff. The cause title in the plaint shows that the plaintiff is represented by Nauratanmal Daga. Filing of an affidavit by his son and later claiming that there was no knowledge about the death of the fourth defendant cannot be countenanced by this Court.

14.I hold that this is only a ruse to proclaim ignorance of a fact which was already known to the plaintiff.

15. Along with the counter affidavit, the respondents have also filed a copy of the affidavit and petition in M.P.Nos.1 to 3 of 2014 in CRP.No.2168 of 2012 filed before the Madurai Bench of Madras High Court.

16. It is seen that the revision petitioner before the Madurai Bench of Madras High Court was also represented by Nauratanmal Daga, who also represents the present plaintiff. The respondents therein and the defendants herein are the same. The applicant could very well have stated that though he came to know about the death in the year 2014, he had unfortunately not filed the present application within the prescribed time. The statement that he came to know about the death in the year 2019 reflects lack of bonafide.

17. No acceptable reason has been advanced as to why Nauratanmal Daga has not filed the present application. It had been only stated that he is aged.

18. Any pleading based on falsity will have to be rejected by the Court. Averment in the affidavit that the plaintiff came to know about the death of the fourth defendant only in the year 2019 to the knowledge of the plaintiff is false.

19. In view of all these reasons, I hold that no indulgence can be granted to the applicant. Accordingly, the application is dismissed. There shall be no order as to costs.

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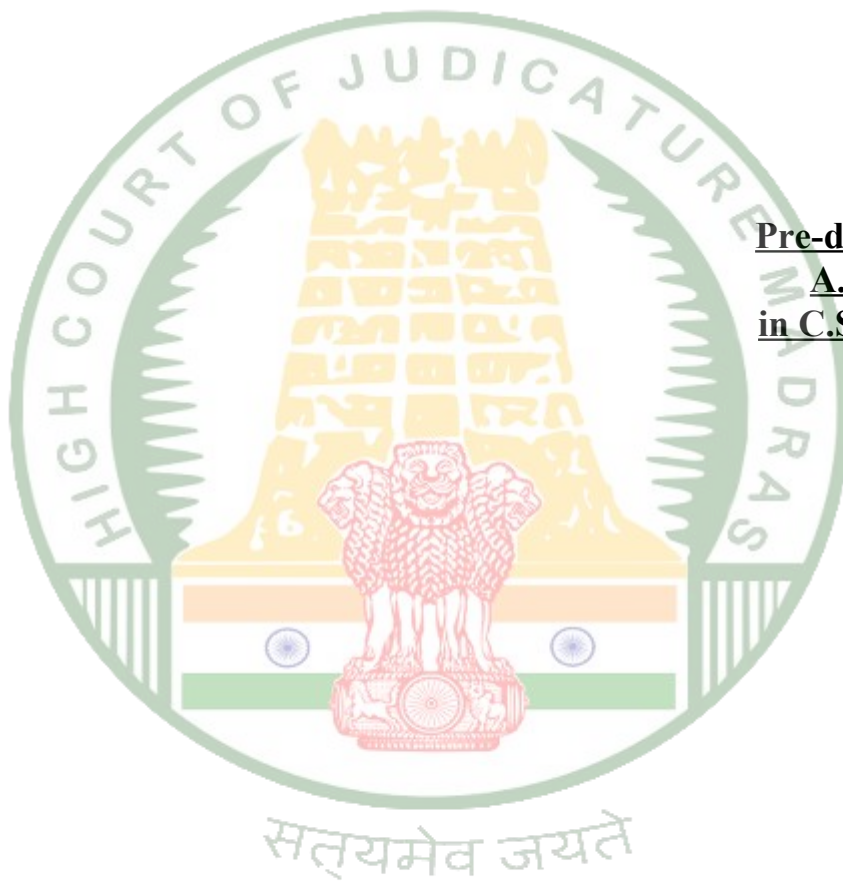
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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

C.V.Karthikeyan, J.



Pre-delivery order in
A.No.9495 of 2019
in C.S.No.675 of 2005

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