

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1374 of 2016

Nagarajan

..Appellant

Vs.

Maharaja

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (c) of CPC, to set aside the fair and decreetal order dated 24.07.2015 made in I.A.No.626 of 2014 in I.A.No.448 of 2011 in O.S.No.144 of 2011 on the file of the learned Principal District Court, Namakkal.

For Appellant : Mr.N.Manokaran

For Respondents : Notice sent not yet received

J U D G M E N T

The Fair and Decreetal order passed in I.A.No.626 of 2014 in I.A.No.448 of 2011 in O.S.No.144 of 2011 is under challenge in the present civil Miscellaneous Appeal.

2. The appellant is the plaintiff, who instituted a suit for recovery of money and the suit was dismissed for non-prosecution on 15.10.2014. Thereafter, the appellant filed an interlocutory application in I.A.No.626/2014 to set aside the order dismissing the suit for default and the said Interlocutory application was dismissed by the learned Principal District Judge, Namakkal on 24.07.2015, on the ground that the appellant had not appeared before the Court despite the opportunities provided and therefore, he was not interested in pursuing the matter and protracted the proceedings.

3. This Court is of the considered opinion that the appellant is the plaintiff, who paid the Court fee and instituted a suit for recovery. Thus, the reasons for non-appearing before the Court may be at the instance of the learned counsel, who appeared before the trial Court, on behalf of the appellant/plaintiff. Because of the mistake committed by the learned counsel, the parties shall not be made to suffer. Thus, the rights are to be decided only after complete adjudication. Merely on the ground that the counsel did not appear and the suit was dismissed for default, the

parties, who instituted a suit by paying the Court fee, shall not be made to suffer. In those circumstances, Courts are expected to take a lenient view and restore the suit enabling the parties to establish their rights by way of adjudication.

4. The learned counsel for the appellant made a submission that the Interlocutory application to set aside the order dismissing the suit for default was filed in time and the said application was not objected by the opposite party. In spite of all these, the trial Court rejected the application on the ground that the appellant had intended to protract the proceedings. The learned counsel for the appellant states that the plaintiff would not have any such intention to protract, in view of the fact that he is the plaintiff, who instituted a suit by paying the Court fee for the purpose of recovering the money from the defendants. Therefore, it is the mistake of the counsel, who appeared before the trial Court and on that ground, the rights of the parties cannot be fructified. Under these circumstances, this Court is inclined to consider the Civil Miscellaneous Appeal. Accordingly, the judgment and decree dated 24.07.2015 passed in I.A.No.626 of 2014 stands set aside and the trial Court is directed to restore the suit and dispose the same as expeditiously as possible preferably within a period of six months as the suit itself is for a recovery of money.

5. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssb

To
The Principal District Court, Namakkal.
+lcc to Mr.N.Manokaran , Advocate SR.No. 666

C.M.A.No.1374 of 2016

A.SK(03.03.2021)

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