

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2815 of 2016

J.C.P.L. Fuel Station,
Unit of Jayaram Construction Pvt. Ltd.,
Rep. by its Managing Director,
J.Jayapathy,
No.37/D, Mount Poonamallee Road,
St.Thomas Mount,
Chennai.

... Appellant/Plaintiff

Vs.

1.Sivaneswaran,
Proprietor,
Sakthi Murugan Transport,
S/o.Palanimalai,
O.V.M.Palayam,
Paramathi (via),
Namakkal District.

2.Mrs.Anitha,
Proprietrix,
S.M.Carriers,
W/o.Sivaneswaran,
No.28, West College Road,
Jagannath Nagar,
Arumbakkam,
Chennai-106.

सत्यमेव जयते

... Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (c) of CPC, to set aside the Fair and Decreetal order dated 05.04.2014 made in I.A.No.52 of 2013 in O.S.No.11983 of 2010 on the file of XIX Additional City Civil Court, Chennai and by allowing the appeal.

For Appellant	:	Mr.C.Veeraraghavan
For R1	:	Left
For R2	:	No Appearance

JUDGMENT

The suit is for recovery of money and the plaintiff is the appellant in the present appeal. The suit dismissed for default by the trial Court due to non-appearance of the plaintiff. The appellant/plaintiff filed an application to restore the suit and the same was restored. When the matter was posted for trial, again the plaintiff remained absent and once again the trial Court dismissed the suit for default.

2.The learned counsel appearing on behalf of the appellant made a submission that the mistake occurred on account of the fault of the learned counsel who appeared in the suit before the trial Court and therefore, the appellant may not suffer on account of such mistake committed by the learned counsel.

3.The Interlocutory Application under Order 9 Rule 9 of the Civil Procedure Code to restore the suit was filed within the time limit. Therefore, the plaintiff had intended to pursue the suit for recovery of money. The trial Court made a finding that there is no valid reason for non appearance of the plaintiff and his counsel on 28.02.2013 and the reason stated in the affidavit are not proved either orally or documentary. Thus, the Interlocutory Application was dismissed, against which the present appeal is filed.

4.Undoubtedly, the suit was dismissed for default on second time, however the trial Court itself made a finding that the learned counsel for the appellant/plaintiff did not appear before the trial Court during hearing on 28.02.2013. The mistake of the counsel cannot affect the rights of the parties. The suit is for recovery of money and an opportunity is to be provided to the plaintiff to contest the case on merits. In the event of restoration of the suit, no prejudice would be caused to the defendant as they are also entitled to contest the case by producing documents and adducing evidences. In order to provide one more opportunity, this Court is inclined to consider the appeal, however it is made clear that the appellant shall not give room for any further default and in the event of committing any default, the trial Court is at liberty to dismiss the case for default.

5.This being the factum, the fair and decreetal order dated 05.04.2014 passed in I.A.No.52 of 2013 in O.S.No.11983 of 2010 is set aside and the suit in O.S.No.11983 of 2010 stands restored. Consequently, the Civil Miscellaneous Appeal is allowed.

6.The parties to the appeal are restrained from seeking unnecessary adjournments. Adjournments are to be granted only on genuine grounds and by recording reasons. Adjournments on flimsy grounds are to be rejected readily by all Courts. The parties cannot be given privilege of getting adjournments for their benefit in order to prolong and protract the issues. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vv2
To

The XIX Additional Judge
City Civil Court,
Chennai.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.Veeraraghavan, Advocate sr 1100.

C.M.A.No.2815 of 2016

SV(CO)
SP(12/03/2021)

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