

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.03.2021
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.896 of 2016
and
C.M.P.No.7257 of 2016

American Baptist Foreign
Mission Society Rep.by
Its Custodian A.J.Samuel,
Residing at 127, Pullapuram,
Kilpauk, Chennai.

..Appellant

Vs.

1.The Property Association of
Baptist Churches Private Ltd.,
Rep.by its Executive Director,
No.2, Artisan Shanumugham Street,
Aynavaram, Chennai - 600 023.

2.Dhanraj Kochar,
Executive Director,
Association of Baptist Churches Private Ltd.,
residing at New No.2, Old No.60,
Montieth Lane, Egmore,
Chennai - 600 008.

3.Inderchand D.Kochar,
residing at New No.2, Old No.60,
Montieth Lane, Egmore,
Chennai - 600 008

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
of C.P.C., the Fair and Decreetal order dated 22.02.2016 made in
I.A.No.13959/2015 in O.S.No.9553 of 2010 on the file of the VI
Additional City Civil Court, Chennai.

For Appellant : No appearance
For Respondents : M/s.Mallika Srinivasan for R1
R2 & R3 - Not ready in notice

J U D G M E N T

The Fair and Decreetal order dated 22.02.2016 passed in
I.A.No.13959/2015 in O.S.No.9553 of 2010 is under challenge in
the present Civil Miscellaneous Appeal.

2. The plaintiff is the appellant and the suit was instituted for the relief of permanent injunction. The suit was posted for hearing. The appellant could not appear before the trial Court on 13.08.2015 and the suit was dismissed for the non-appearance. The appellant filed an Interlocutory Application under Order 9 Rule 9, to restore the suit, which was dismissed for default on 13.08.2015. The reason stated was that the suit was posted on 05.08.2015 for the appearance of the plaintiff and the counsel for the plaintiff had taken an adjournment and the matter was again posted on 13.08.2015. The learned counsel had insisted the plaintiff to be present before the Court. The plaintiff approached his Doctor and he was advised the plaintiff, not to undertake any travel even for flight for few more weeks. Thus, the plaintiff could not appear before the Court on 13.08.2015 and due to non-appearance, the suit was dismissed for default. The trial Court considered the objections raised by the respondent, stating that the plaintiff/appellant had not appear before the Court in order to prolong the suit and therefore, the petition is to be dismissed. The trial Court, accepting the contention of the respondent, dismissed the petition for restoration by stating that the reason stated for restoration of suit is insufficient.

3. This Court is of the considered opinion that all the suits are to be decided on merits and by affording opportunity to all the parties. Undoubtedly, if the parties to the lis adopt a tactics to prolong the suit, then the Court may draw an inference and pass appropriate orders. However, in the present case, the learned counsel for the plaintiff was appearing in the suit. He insisted for the appearance of the plaintiff. But the plaintiff could not appear on account of the advise given by his Doctor not to travel. Thus, there is a reason for non-appearance and therefore, one opportunity should have been given for the plaintiff to adjudicate the issues on merits. The appellant is American Baptist Foreign Mission Society. The suit is filed for permanent injunction.

4. Under these circumstances, the issues raised are to be decided on merits and by affording opportunity to the parties. This being the issues to be considered, the trial Court has committed an error in not providing an opportunity to the appellant to contest the case and decide the issues on merits.

5. In this view of the matter, the Fair and Decreeal order dated 22.02.2016 passed in I.A.No.13959/2015 in O.S.No.9553 of 2010 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.896 of 2016 is allowed. The suit stands restored. The trial Court is directed to proceed with the suit and dispose of the same as expeditiously as possible preferably within a period of 10 months from the date of receipt of a copy of this judgment. The parties are directed to co-operate for the early

disposal of the suit. 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 in limine 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

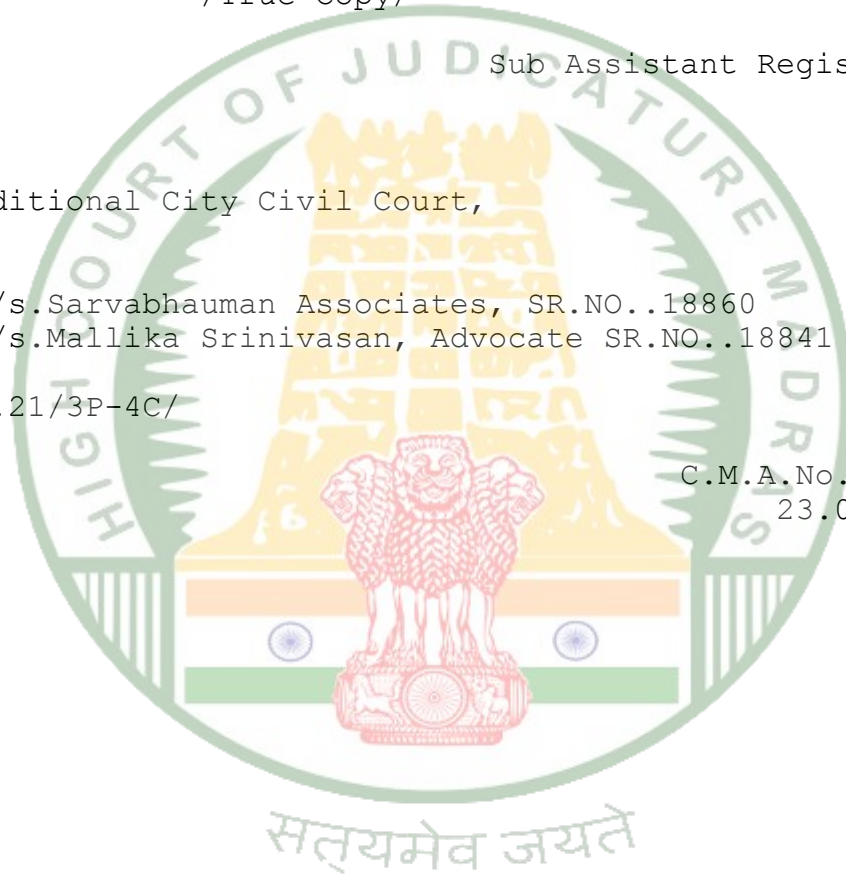
To

The VI Additional City Civil Court,
Chennai.

+1cc to M/s.Sarvabhauman Associates, SR.NO..18860
+1cc to M/s.Mallika Srinivasan, Advocate SR.NO..18841

AKM/27.04.21/3P-4C/

C.M.A.No.896 of 2016
23.03.2021



WEB COPY