

A.No.2376 of 2021
in
C.S.No.402 of 2011

R.SUBRAMANIAN, J.

This application has been filed, seeking condonation of delay of 1579 days in seeking to set aside the exparte decree made in C.S.No.402 of 2011 on 08.03.2017.

2.This proceedings have a chequered history. The suit relates to satellite television rights in a tamil movie titled “ Kavalan”. While the applicant claim rights to the satellite exploitation of the said movie by virtue of an agreement dated 21.07.2010, the 1st first respondent claim the same rights by virtue of an agreement dated 27.11.2010. Both the applicant and the 1st respondent would claim the right under the 2nd respondent namely, Cinema Paradise.

3.The applicant herein had filed C.S.No.53 of 2011, seeking declaration and that he is the absolute owner of the satellite television rights in a movie “Kavalan” and permanent injunction restraining the defendants from infringing or interfering with the said right. The said suit was filed

against the original producer of the movie and the subsequent purchasers, who are ranked as respondents 2 and 3 herein. The 3rd defendant in the suit is the laboratory, which was in possession of the negatives of the film. During the pendency of the said suit, it appears that the 1st respondent herein namely, Sun TV Network had filed another suit in C.S.No.402 of 2011, seeking a decree for permanent injunction restraining the defendants in the said suit from interfering with its rights to exploit the satellite rights of the movie.

4.Unfortunately, the plaintiff in C.S.No.53 of 2011 was not made a party to C.S.No.402 of 2011 and the plaintiff in C.S.No.402 of 2011 was not made a party to C.S.No.53 of 2011. During the pendency of the above two suits, a 3rd suit came to be filed by a Financier namely, Mr.M.V.R.S.Prasad in C.S.No.483 of 2012. In the said suit, he had sought for relief of permanent injunction restraining the 1st defendant therein namely, Sun TV Network Limited, producers and the Lab from exhibiting, exploiting and distributing the tamil feature film “Kavalan” in any television network. Being a Financier, he claimed a lien over the movie. There were several interim orders passed in all these suits and appeals were taken from the said interim orders.

5.The application for injunction filed by the plaintiff in C.S.No.53 of 2011 in O.A.No.75 of 2011 was dismissed, as against which, it filed OSA.No.22 of 2012, which was also dismissed, observing that he could work out his right in C.S.No.402 of 2011, since his application for impleading himself in the said suit was pending.

6.In the interregnum, the plaintiff in C.S.No.402 of 2011 namely, Sun TV Network Limited had deposited certain monies into Court to the credit of the said suit. The plaintiff in C.S.No.483 of 2012 namely, the Financier was allowed to withdraw the same. That order was challenged by the original producer of the movie in O.S.A.No.424 of 2012. The Hon'ble Division Bench affirmed the order, permitting him to withdraw the money but left open the other issues to be decided in the suit. It is in this backdrop, the present applicant was impleaded as a defendant in C.S.No.402 of 2011 by order dated 08.11.2012 and the amendment was carried out on 21.11.2012. Though the amendment was carried out, there is no evidence of service of summons in the suit on the impleaded party. He had also not filed a written statement.

7.During the interregnum, on 17.03.2016, C.S.Nos.483 of 2012 & 402 of 2011 were listed before the Court. Hon'ble Mr.Justice M.Sathyanarayanan had directed those two suits to be listed along with C.S.No.53 of 2011. However, as it is usual practice of the Registry, the said order was not complied with. The two suits namely, C.S.Nos.402 of 2011 & 483 of 2012 were listed separately and the name of the counsel for the impleaded party namely, the applicant herein was not printed in the cause list, which resulted in this Court granting an exparte decree on 08.03.2017. The matter was actually listed on 24.02.2017 on which date, the 4th defendant in the said suit i.e., the newly added party, the applicant herein was set exparte and the judgement was eventually pronounced on 08.03.2017. The cause list dated 24.02.2017 has been produced and it is seen there from that neither the name of the 4th defendant nor the name of the counsel for the 4th defendant was printed in the cause list.

8.According to the affidavit filed in the support of this application, the applicant herein came to know about the exparte decree only, when C.S.No.53 of 2011 listed subsequently during the year 2019 and thereafter, he had to make a search to find out what exactly happened. Therefore,

according to the applicant, the delay is not wilful, it is only due to the mistake of the Registry in not posting the suits together and not printing the name of the counsel for the 4th defendant in the cause list on 24.02.2017, when the 4th defendant came to be set exparte.

9.The above narration would show that the 4th defendant has a sufficient cause for condonation of delay. The fact that the 4th defendant was heard in the original side appeals and the orders were passed leaving its claim to be adjudicated in the suit is not in dispute therefore, the 4th defendant is a person aggrieved and it has got every right to have the exparte decree set aside.

10. Considering the above, this application is allowed, the delay of 1579 days in filing the application to set aside the exparte decree is condoned. Registry is directed to number the application filed to set aside the exparte decree.

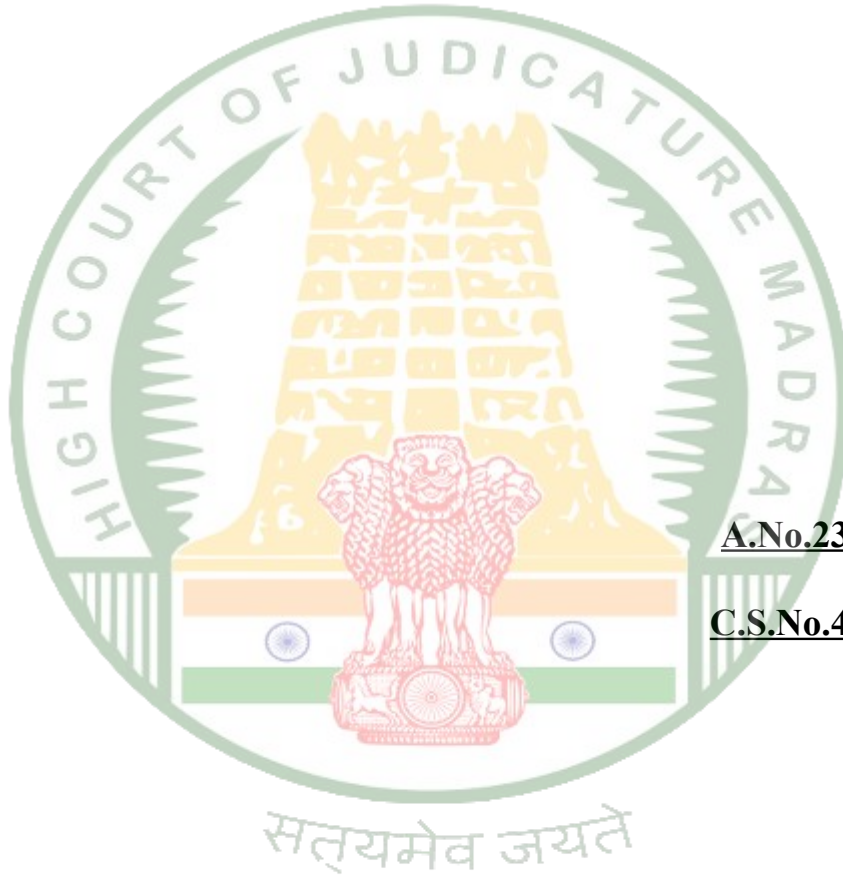
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