

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

C.M.A.No.2519 of 2019

M/s.Ragavaa Knit Compactors
Rep. by its Partner
Mr.A.P.Subramaniam

..Appellant

Vs.

1.The Secretary
Ministry of Textiles
New Delhi

2.Government of India
Rep. by its Director (Enforcement)
Central Public Information Office
Ministry of Textiles
Office of the Textile Commissioner
Nishtha Bhavan
New CGO Building
No.48, New Marine Lines
Mumbai-400 020.

3.The Tamil Nadu Industrial Investment
Corporation Limited
No.692, Anna Salai
Nandanam, Chennai-600 035.

4.The Branch Manager
Tamil Nadu Industrial Investment
Corporation Limited
Kumaran Shopping Complex
II Floor, New Railway Station
Tiruppur.

..Respondents

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Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(c) of CPC, to set aside the fair and decreetal order dated 10.10.2018 made in I.A No.744 of 2018 in O.S No.87 of 2017, on the file of the II Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.A.E.Ravichandran

For Respondents : M/s.Sunitakumari for R1 & R2
Mr.K.Magesh for R3 & R4

J U D G M E N T

The fair and decreetal order dated 10.10.2018 passed in I.A No.744 of 2018 in O.S No.87 of 2017 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant is the plaintiff in the suit and the suit was instituted for recovery of money. The suit was dismissed for default on 06.03.2018, due to the non-appearance of the counsel for the plaintiff. Thereafter, an interlocutory application under Order 9 Rule 9 was filed to set aside the order of dismissal dismissing the suit for default. The said application was dismissed by the trial Court. Thus, the appellant is constrained to move for an appeal.

3. The learned counsel for the appellant made a submission that it is a mistake made on the part of the counsel who did not appear on that day and therefore, there is no intention on the part of the appellant not to appear before the Court and therefore, he is entitled for an opportunity to contest the case.

4. The learned counsel for the respondents objected the said contention by stating that the matter was called and none appeared for the plaintiff and therefore, the trial Court dismissed the suit for default and further, the reasons stated for restoration of the suit was not convincing and thus, the trial Court is right in rejecting

the application. Consequently, the present Civil Miscellaneous Appeal is liable to be dismissed.

5. This Court is of the considered opinion that all the suits are to be decided on merits by affording opportunity to all the parties concerned. Admittedly, the suit was dismissed for default due to the non-appearance of the plaintiff on 06.03.2018. However, an interlocutory application under Order 9 Rule 9 CPC was filed on 02.04.2018 within the period of limitation. This apart, the non-appearance of the counsel for the plaintiff would not affect the right of the plaintiff to pursue the suit on merits and in accordance with law. This Court is of the opinion that the trial Court has committed an error in not providing opportunity to the appellant to adjudicate the suit on merits and in accordance with law. This being the factum, the fair and decreetal order dated 10.10.2018 passed in I.A No.744 of 2018 in O.S.No.18 of 2017 is set aside and the present Civil Miscellaneous No.2519 of 2019 stands allowed. In view of the fact that the suit is of the year 2017, the trial Court is requested to dispose of the suit as expeditiously as possible and preferably within a period of ten months from the date of receipt of a copy of this judgment.

6. The parties are directed to co-operate for the earlier disposal of the suit. The parties are restrained from seeking unnecessary adjournments. Even in case, adjournments are to be granted on genuine grounds, the Court should record the reasons. The adjournments on flimsy grounds are liable to be rejected in limini. No costs.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub-Assistant Registrar

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To

The II Additional District and Sessions Judge
Tiruppur.

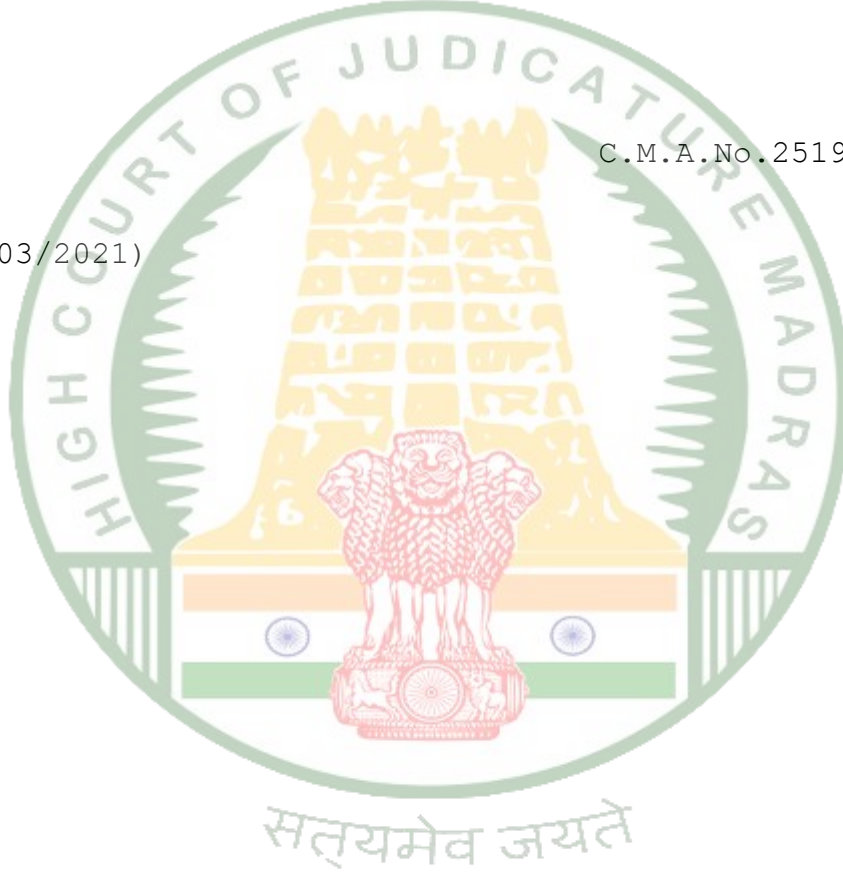
+1CC to Ms. Sunita Kumari Advocate, SR.NO. No. 1391.

+1CC to Mr.A.E. Ravichandran Advocate, SR.NO. No. 1687.

+1CC to Mr. K.Magesh Advocate, SR.NO. No. 1859.

C.M.A.No.2519 of 2019

MG (CO)
NRA (17/03/2021)



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