

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4328 of 2019
and

C.M.P.No.24550 of 2019

1. Most. Rev. Dr. George Antonysamy
Archbishop of Madras - Mylapore,
21, Santhome High Road,
Chennai - 600 004.
2. Rt. Rev. A. Anandarayar,
Archbishop of Pondicherry, Cuddalore,
Archbishop's House, Pondicherry - 605 001.
3rd Defendant is substituted as per the
order in I.A.No.4687/2008, dated 03.06.2008
3. Most. Rev. Dr. Devadoss Ambrose,
Bishop of Thanjavur,
Bishop's House, Thanjavur - 613 007.
4. Rt. Rev. P. Soundararajan Periyannayagam Sdb,
Bishop of Vellore, Bishop's House,
Vellore - 632 001.
6th defendant is substituted as per the
order in I.A.No.4687/2008, dated 03.06.2008.
5. Rt. Rev. S. Singaroyar,
Bishop of Salem, Bishop's House,
Maravaneri, Salem - 636 007.
6. Most. Rev. Dr. Thomas Aginas,
Bishop of Coimbatore, Bishop's House,
Coimbatore - 636 007.
7. Rt. Rev. Antonysamy Francis,
Bishop of Kumbakonam, Bishop's House,
Kumbakonam - 612 001.
10th defendant is substituted as per the
order in I.A.No.5492/2008, dated 30.06.2008
8. Rt. Rev. Susimanickam,
Bishop of Sivagangai, Bishop's House,
Sivagangai - 623 560.

.. Appellants

Versus

- 1.G. Alex Benziger
- 2.Dr. Leonard Vasanth "Vasco"
- 3.J.V. Fernando

4.Catholic Bishops Conference of India,
Represented by the Secretary General,
CBCI Centre, 1, Ashok Place,
Near Goleedakhana,
New Delhi - 110 001.

5.Rt. Rev. George Zur,
Apostolic Pro-Nuncio to India,
50-C, Niti Marg, Chanakayapuri,
New Delhi - 110 021.

6.Most. Rev. Dr. Peter Fernando, (Deceased)
Archbishop of Madurai,
Archbishop's House,
Pondicherry - 625 008.

7.Rt. Rev. Dr. Antony Devotta,
Bishop of Trichy,
Bishop's House, Tiruchirappalli - 620 001.

8.Rt. Rev. Ivan Ambrose,
Bishop of Tuticorin,
Bishop's House,
Tuticorin - 628 001.

9.Rt. Rev. Dr. Jude Paulraj,
Bishop of Palayamkottai,
Catholic Bishop's House,
Palayamkottai,
Tirunelveli - 627 001.

10.Rt. Rev. Dr. Peter Remigius,
Bishop of Kottar,
Bishop's House, Nagercoil - 629 001.
(14th defendant is substituted as per the order
of the court made in I.A.No.4687/2008
Dated 03.06.2008)

11.Rt. Rev. Dr. Anandarayar,
Bishop of Ootacamund,
Bishop's House, Ootacamund - 643 001.

.. Respondents

Prayer: Civil Miscellaneous Appeals filed under Order XLIII Rule 1 of C.P.C., to set aside the fair and decretal order dated 13.06.2019 made in C.M.P.No.764 of 2017 in A.S.No.430 of 2013, on the file of the I Additional City Court, Chennai, and restore the First Appeal in A.S.No.430 of 2013.

For Appellants : M/S. Father Xavier Associates
for Mr.Father Xavier Arulraj,Sr.Counsel

For Respondent : Mr. K.Shanmugakani
for RR1 to 3

No Appearance : R4 to 6, 8 to 11

R1 died : Steps due

J U D G M E N T

The fair and decretal order dated 13.06.2019 passed in C.M.P.No.764 of 2017 in A.S.No.430 of 2013 is under challenge in the present Civil Miscellaneous Appeal. The suit was instituted by the respondents 1 to 3 for declaration. The suit was decreed in favour of the plaintiffs to the extent stated in the decree. The defendants 2 to 15, instituted appeal suit in A.S.No.430/2013 and the appeal suit was dismissed for default. The 13th appellant instituted the appeal suit in A.S.No.430/2013 on behalf of other appellants. The civil miscellaneous petition in C.M.P.No.764 of 2017 was filed to set aside the order of dismissal, dismissing the first appeal for default. The trial Court dismissed the said petition filed under Order 41 Rule 19 mainly on the ground that the deponent of the affidavit is not an appellant and further he was not possessing authorisation from the 14 appellants. Despite the fact that the application is filed to set aside the order of dismissal dismissing the first appeal on default. The trial Court dismissed the petition in limine and the present appeal is filed.

2. The learned Senior Counsel appearing on behalf of the appellants mainly contended that the deponent of the petition Rev. Fr. Rolington was all along authorised by the appellants even to contest the suit. The said Rev. Fr. Rolington deposed before the trial Court and subjected himself for cross examination as he was an expert in the particular subject with reference to the dispute in the suit. The suit is with reference to liturgy and therefore, he would be the apt person to depose regarding the issues raised in the suit by the respondents 1 to 3. When the said Rev. Fr. Rolington participated in the process of trial before the trial Court, he was authorised to institute the appeal suit before the first appellate Court and the appeal was filed and the matter was

posted for hearing. The learned counsel appearing on behalf of the appellants was not able to appear before the appellate Court due to health reasons. On that day, the first appellate Court dismissed the appeal suit for default. Thus, the petition is filed to restore the appeal suit for the purpose of adjudication. The first appellate Court without considering the genuine reason of ill health of learned counsel, dismissed the petition, merely on the ground that Rev. Fr. Rolington, was not possessing valid authorisation for six appellants. Thus, the order is perverse and liable to be set aside.

3. The learned counsel appearing on behalf of the respondents 1 to 3 strenuously opposed the contentions of the appellants by stating that the institution of the appeal suit itself is improper and therefore, the appeal suit is liable to be rejected in limine. The respondents 1 to 3 are of the opinion that Rev. Fr. Rolington is not an authorised person to institute the appeal suit in respect of all the 14 appellants and he was possessing authorisation only in respect of appellants 1, 2, 5, 6, 7, 9 and 10. Therefore, the appeal suit itself is defective and thus the present appeal is also to be dismissed. The appellants are bound to contest the appeal suit and the authorised person in this field cannot contest the appeal suit and therefore, the first appellate Court is right in rejecting the application which is based on sound principles. Thus, the civil miscellaneous appeal is to be dismissed.

4. Considering the arguments as advanced, this Court is of the considered opinion that the civil miscellaneous appeal is preferred against the order passed by the first appellate Court rejecting the application filed under Order 41 Rule 19 for restoration of appeal suit. Admittedly, the appeal suit was dismissed for default due to the non-appearance of the learned counsel for the appellants on 06.07.2017. This being the order which is under challenge in the present civil miscellaneous appeal, the contentions raised by the respective learned counsel on merits of the suit deserves no merits on adjudication. All such merits and demerits are to be adjudicated before the first appellate Court with references to the documents and evidences produced by the parties to the suit. Contrarily, this Court, cannot look into the documents and evidences for the purpose of deciding the matter on merits.

5. Undoubtedly, the appeal suit is the continuation of civil suit, as per section 107 CPC. The suit was decreed in favour of respondents 1 to 3. The appellants preferred appeal suit challenging the decree. Thus, the appeal suit is to be decided on merits and in accordance with law. The decree cannot be confirmed based on the order passed by the first appellate Court, dismissing the first appeal for default. Undoubtedly, it

is the mistake on the part of learned counsel for the appellants in not appearing before the Court on a particular day. Due to the mistake committed by the learned counsel, the parties cannot be made to suffer and their rights of adjudication on merits cannot be denied. In other words, if at all a mistake is committed by an advocate in not appearing before the Court of law, the rights of the parties cannot be denied and the Courts are bound to exercise its jurisdiction, in order to provide an opportunity to the parties to adjudicate the issues on merits and in accordance with law. This being the principles of natural justice to be followed, this Court is of the considered opinion that the present order under challenge is rejection of the application filed to restore the first appeal, which was dismissed for default on account of the non-appearance of the learned counsel, who was appearing in the appeal suit on behalf of the appellants. This being the factor established, the other merits and demerits raised in the present appeal by the respective parties deserve no further adjudication and this Court is not inclined to give any findings on such merits or demerits. All such grounds are to be raised by the respective parties before the first appellate Court at the time of hearing of the appeal suit. With these facts and circumstances, this Court is of the

opinion that the present appeal deserves to be considered. Accordingly, the fair and decretal order dated 13.06.2019 passed in C.M.P.No.764 of 2017 in A.S.No.430 of 2013 is set aside. C.M.A.No.4328 of 2019 stands allowed. The first appellate Court is directed to restore the appeal suit on file and dispose of the same by affording opportunity to all the parties and decide on merits and in accordance with law. Such an exercise is directed to be done within a period of six months from the date of receipt of a copy of this judgment.

6. The parties to the appeal suit are directed to co-operate for the earlier disposal of the first appeal. No unnecessary adjournments should be sought for by the parties. The first appellate Court is bound to reject all such adjournments made on flimsy grounds. Adjournments on genuine grounds may be granted by recording reasons.

7. With these observations, the civil miscellaneous appeal stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AT

To

I Additional Judge,
City Civil Court,
Chennai.

+2cc to M/s.Fr.Xavier Associates, Advocate SR.1386

C.M.A.No.4328 of 2019 and
C.M.P.No.24550 of 2019

MP (CO)
CB (03/03/2021)



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