

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.2592 of 2017

and

C.M.P No.14197 of 2017

P.Prathiba

..Appellant

Vs.

M.Chandira

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(R) of CPC, to set aside the fair and decreetal order dated 14.07.2017 passed in I.A No.56 of 2017 in O.S No.36 of 2016 on the file of the II Additional District Court, Erode.

For Appellant : Mr.M.Karthick
For Mr.I.C.Vasudevan

For Respondent : Not Ready in notice

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the fair and decreetal order dated 14.07.2017 passed in I.A No.56 of 2017 in O.S No.36 of 2016.

2. The fourth defendant is the appellant in the present appeal and the respondent is the plaintiff, who instituted the suit for specific performance. The appellant filed a written statement in the suit along with the interlocutory application filed to set aside the exparte order. Due to non-appearance of the appellant before the trial Court, the suit was set exparte against her and an interlocutory application to set aside the exparte order was filed under Order 9 Rule 13 CPC. The trial Court dismissed the said application, against which the present appeal is filed.

3. The reasons stated for the rejection of the application is that the parties have taken efforts to settle the issues. In view of the fact that the settlement process was going on, the appellant had not appeared before the Court in order to contest the case.

4. This Court is of the considered opinion that the said factum was not disproved by the plaintiff and therefore, the trial Court ought to have considered the same and grant an opportunity to the appellant to contest the case on merits and in accordance with law. All the suits are to be decided on merits by affording opportunity to all the parties concerned and unless, it is established that the parties are intended to protract and prolong the issue and wantonly not appeared before the Court on certain flimsy grounds.

5. In the present case, the appellant has established that she had an intention to contest the case and she did not appear before the trial Court in view of the fact that the settlement process was going on. Along with the set aside application the present appeal has been filed, this Court is inclined to consider the appeal.

6. Accordingly, the fair and decreetal order dated 14.07.2017 passed in I.A No.56 of 2017 in O.S No.36 of 2016 is set aside and the present Civil Miscellaneous Appeal No.2592 of 2017 stands allowed. No costs. The trial Court is requested to dispose of the suit as expeditiously as possible by affording opportunities to the parties concerned on merits and in accordance with law. Consequently, the connected Miscellaneous Petition is closed.

7. The parties are restrained from seeking unnecessary adjournments. Even in case, adjournments are to be granted on genuine grounds and the Court should record the reasons. The adjournments on flimsy grounds are liable to be rejected in limini.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge
Erode

Copy to

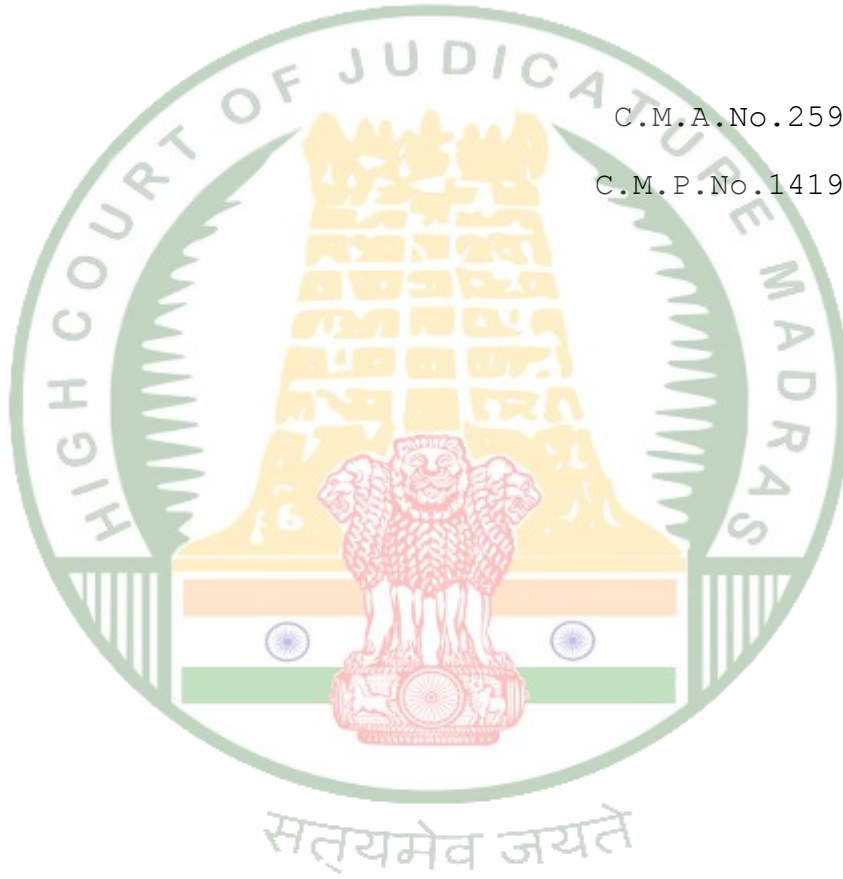
2. The Section Officer,
VR Section, Highcourt,
Madras.

+1cc to Mr.I.C. VASUDEVAN, Advocate, S.R.No.1998

LN(CO)
SM/01/03/2021

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