

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4583 of 2019
and
C.M.P.No.26027 of 2019

Chandra Viswanathan .. Appellant

Vs.

1. RKR Hotels (P) Ltd.,
By Authorised Signatory K.C.Tharyan
NO.3, Mangesh Street,
T.Nagar, Chennai.

2. R.V.Ravikumar ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of the C.P.C., against the order passed in I.A.No.65 of 2018 in O.S.No.137 of 2012 dated 19.09.2019 by the learned 3rd Additional District Judge, Puducherry.

For Appellant : Mr.M.Devaraj

For Respondents : Mr.R.Parthasarathy

सत्यमेव जयते
J U D G M E N T

The Fair and Decreetal order dated 19.09.2019 passed in I.A.No.65 of 2018 in O.S.No.137 of 2012 is under challenge in the present Civil Miscellaneous Appeal.

2.The plaintiff is the appellant and the suit was instituted for Declaration of title and to deliver vacant possession and for Permanent injunction. The suit was dismissed for default due to the non-appearance of the plaintiff. The Interlocutory Application was filed to restore the suit. The Trial Court rejected the application filed under Order 9 Rule 9 of C.P.C., on the ground that the plaintiff was not interested in pursuing

the suit and to prolong the litigations with an ulterior motive to hold the first respondent's construction involved huge expenses. The respondent started massive construction, the plaintiff states that such constructions are made by encroaching the property belonged to the plaintiff. The issues were framed and the plaintiff filed I.A.No.27/2013 for appointment of Commissioner to measure the property and find out the encroachment. The suit was posted for trial and there was no representation for three occasions. Thus, the suit was dismissed for default. The Restoration Petition filed was also rejected. Thus, the appellant filed the present appeal.

3. All suits are to be decided on merits and in accordance with law. Undoubtedly, the counsel for the appellant did not appear before the Trial Court for three occasions. Because of the mistake committed by the counsel for the plaintiff, the opportunity to adjudicate the issues cannot be denied to the plaintiff. Only on exceptional circumstances, if there is an intentional act in order to prolong the suit, then alone, the Courts can reject the application. In all other circumstances, Courts are bound to take lenient view as the rights of the parties are to be crystallized only by way of complete adjudication in a Civil Suit. If a suit for Declaration of title and delivery of possession and is dismissed for default, undoubtedly, the rights of the parties would be greatly prejudice and therefore, this Court is of an opinion that an opportunity is to be provided with a condition to pursue the suit carefully, enabling the plaintiff to adjudicate the issues on merits.

4. The trial Court has not given any such opportunity, contrarily, arrived a conclusion that the plaintiff did not appear with an ulterior motive to hold the first respondent's construction. Such a finding is unnecessary, in view of the fact that the suit was dismissed for default due to the non appearance for the learned counsel. However, the plaintiff would also expected to be careful in pursuing the litigation, enabling the Court to dispose of the matter as expeditiously as possible.

5. In this view of the matter, the Fair and Decreetal order dated 19.09.2019 passed in I.A.No.65 of 2018 in O.S.No.137 of 2012 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.4583 of 2019 is allowed. The trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of 10 months from the date of receipt of a copy of this judgment. 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 VII)

//True Copy//

Sub Assistant Registrar

KAK

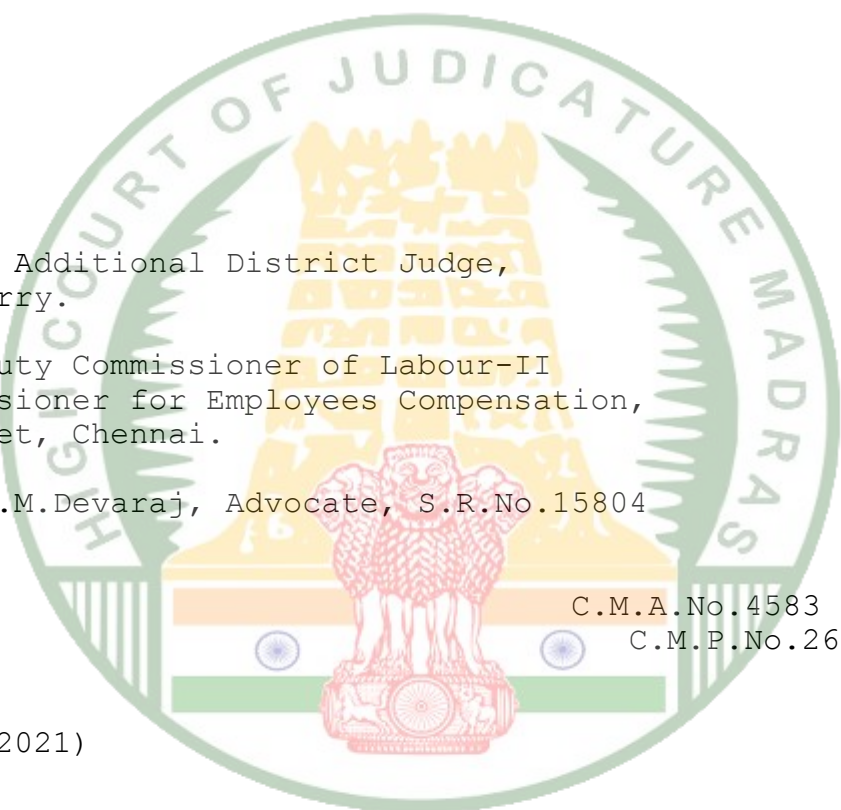
To

1. The III Additional District Judge,
Puducherry.
2. The Deputy Commissioner of Labour-II
/Commissioner for Employees Compensation,
Teynampet, Chennai.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.15804

C.M.A.No.4583 of 2019 and
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SMI (CO)
TE (19/04/2021)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital with a wheel (Chakras) in the center. The entire emblem is set against a background of green and white stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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