

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD)No.4032 of 2018
and C.M.P.No.22300 of 2018

1.Church of South India,
An Unregistered Body,
Rep. by the CSI Synod Secretary

2.Church of South India Diocese of Madras,
An Unregistered Body,
Rep. by its Secretary

3.Church of South India Trust Association,
A Company incorporated under the Companies Act,
Rep. by its Secretary

...Petitioners

सत्यमेव जयते
Vs

Meston Education & Development Association (P) Ltd.,
A Company incorporated under the Companies Act,
Rep. by its Secretary/Director

... Respondent

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the order and decretal order dated 04.10.2018 in I.A.No.10995 of 2016 in O.S.No.13823 of 2010 on the file of the VI Additional City Civil Court, Chennai.

For Petitioners : Mr.V.Prakash, Senior Counsel
for Mr.Adrian D.Rozario
For Respondent : Mr.George Graham
for M/s.Devadason and Sagar

ORDER

This Civil Revision Petition has been filed challenging the order dated 04.10.2018 in I.A.No.10995 of 2016 in O.S.No.13823 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2.Mr.V.Prakash, learned Senior Counsel for the petitioners/defendants submitted that originally the suit was filed before this Court in C.S.No.759 of 2003. Subsequently, it was transferred to the VI Additional City Civil Court, Chennai on 11.11.2010 due to the change in pecuniary jurisdiction and re-numbered as O.S.No.13823 of 2010. After the transfer of case, the Court below listed the suit on 24.12.2010 and thereafter vide order 13.06.2011, the petitioners were set exparte.

3.The learned counsel further submitted that the another suit in C.S.No.2 of 2007 was transferred to the Fast Track Court No.4, Chennai. In that case, notice was served through the Court to both the parties to the suit. In the similar manner, he was waiting for the notice in the present suit. However, no notice was served in the present suit. Therefore, he was not able to appear and the petitioners/defendants were set exparte on 13.06.2011. Thereafter, the suit itself dismissed for default on 07.09.2011.

4.Subsequently, the respondent/plaintiff filed an application for restoration of the suit. The respondents herein also made no objection for the same. Therefore, ultimately on 28.04.2016 the suit was restored. The present counsel in the suit has come on change of vakalat and papers were not available with him. Thereafter, on 02.08.2016, I.A.No.10995 of 2016 was filed to set aside the exparte order dated 13.06.2011. Effectively, there was only 166 days delay in filing the application to set aside the exparte order dated 13.06.2011, that too due to the non-issuance of summons to the petitioners/defendants, they were not able to appear in the present suit.

5.The learned Senior Counsel further submitted that the relief sought in the present case cannot be decided in exparte and proper adjudication is required. The Court below has wrongly taken into consideration that there was a delay of 13 years in filing the written statement. The petitioners were waiting for the summons. Without issuing the summons, the suit was listed for filing the written statement and the petitioners were set exparte, which is not just and proper. Hence, prayed to set aside the order of the Court below.

6.Per Contra, the learned counsel for the respondent submitted that the suit was filed in the year 2003 before this Court and it was transferred on 11.11.2010 to the VI Additional City Civil Court, Chennai. Even when the suit was pending before this Court for the period of seven years, the petitioners have not filed the written statement. On 13.06.2011, the present case was listed for filing the written statement and due to non appearance of the petitioners/defendants, they were set exparte.

WEB COPY

7.He fairly submitted that the summons were not served to the petitioners and they were set exparte on 13.06.2011. Thereafter, the suit was dismissed for

default on 07.09.2011. The learned counsel further submitted that the restoration application was filed by the respondent for which the petitioners have not raised any objection. After the restoration of the suit, on 15.06.2016 the suit was listed for exparte evidence and the same was also closed. On 02.08.2016, the present application to set aside the exparte order dated 13.06.2011 was filed. There was considerable delay on the part of the petitioners herein. All these aspects were considered by the Court below and well reasoned order need not be interfered.

8.Heard Mr.V.Prakash, learned Senior Counsel for the petitioners and Mr.George Graham, learned counsel for the respondent.

9.Upon hearing and on perusal of the records, it appears that the suit was filed in the year 2003. Subsequently, it was transferred from this Court to VI Additional City Civil Court, Chennai, vide order dated 11.11.2010. It appears no summons were served to the petitioners herein after the transfer of suit to the City Civil Court, Chennai and further it was the submission of the learned counsel for the petitioners that if the matter got transferred, the summon has to be served to the defendant. In such circumstances, without any service of summons, the case

was listed on 13.06.2011 and the Revision Petitioners were set exparte. Subsequently, the suit itself dismissed for default on 07.09.2011 and the same was restored only on 28.04.2016.

10.No doubt, in the present case the relief sought in the plaint has to be granted by way of contest. Without proper adjudication, the relief cannot be granted. For these reasons, the Court below ought to have set aside the exparte order dated 13.06.2011 and granted time to file the written statement. The Court below without considering these aspects has dismissed the application to set aside the exparte order stating that there was a delay of 13 years, which is not just and proper.

11.When the suit was filed for a larger relief, the same cannot be decided by exparte decree, without any contest, which will affect the interest of both the parties. In the present case, not only the interest of the parties, but the relief has been sought for the Management of Schools and Colleges, therefore, the interest of the public also will get affected. Thus this Court is of the opinion that the rights of the parties to the suit can be decided only by contest and not by passing the

exparte decree. Therefore, this Court is inclined to set aside the order passed by the Court below dated 04.10.2018 and accordingly the said order is set aside.

12.In the result, the exparte order dated 13.06.2011 is set aside. The Revision Petitioners are directed to file the written statement within a period of three weeks from the date of first hearing fixed by the Court below after the receipt of this order copy.

13.With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

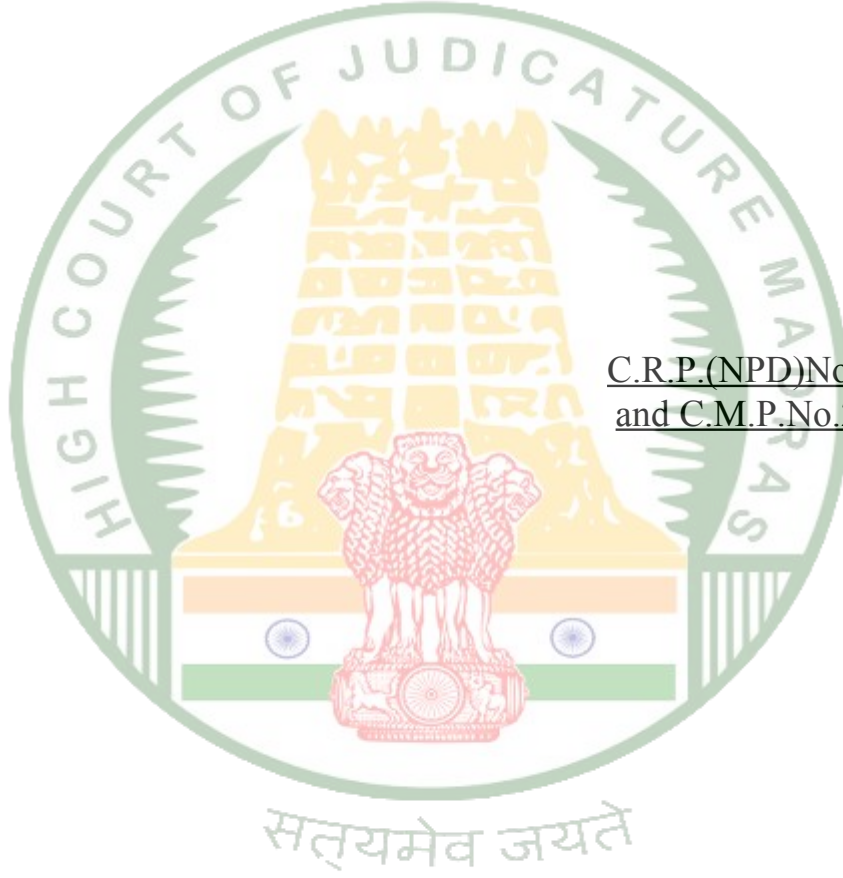
rst

To:

The VI Additional City Civil Court, Chennai.

KRISHNAN RAMASAMY,J.

rst



C.R.P.(NPD)No.4032 of 2018
and C.M.P.No.22300 of 2018

WEB COPY

15.03.2021