



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2021
DATE OF VERDICT : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.NO.1568 OF 2019
AND
C.M.P NO.4467 OF 2019

M/s.Paulson's Limited
Rep. by its authorised representative
Mr.Jayaraj, S/o.Arumuga Nainar
Hindu, aged about 73 years
Residing at Flat No.7, Singapore Avenue
Moolakulam, Pondicherry ...Appellant / Petitioner

Vs.

M/s.S.V.S. Enterprise
a registered Partnership Firm
Represented by its Partner
R.Venugopal, S/o.R.Ramamoorthy
Hindu, aged about 48 years
Having its office at Door No.41
Chidambaram Road, Jayakondam
Ariyalur District-621 802. ...Respondent / Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(d) read with Section 104 of C.P.C, praying to set aside the order and decretal order passed by the Principal District Judge, Puducherry dated 04.01.2019 passed in I.A No.1653 of 2017 in O.S No.72 of 2014.

For Appellant : Mr.D.Prabhu Mukunth Arunkumar

For Respondent : Mr.V.Raghavachari

J U D G M E N T

The fair and decreetal order, passed in I.A.No.1653 of 2017 in O.S.No.72 of 2014, dated 04.01.2019 is under challenge in this Civil Miscellaneous Appeal.

2. The appellant is the defendant. The respondent is the plaintiff. The suit was filed for recovery of money. In the



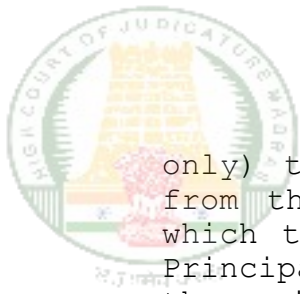
suit proceedings, the appellant was set exparte for non examination of PW1 on 24.04.2017 and he had filed two interlocutory applications in I.A Nos.955 of 2017 and 956 of 2017 to reopen the case and to set aside the exparte order, dated 24.04.2017 respectively. The said applications were allowed on 21.7.2017 subject to payment of a cost of Rs.1,500/- to the Legal Services Authority. Thereafter, the said petitions were dismissed due to non-compliance of the said order and hence, the trial Court had passed an exparte decree on 04.08.2017. As against the said exparte decree, the appellant/defendant had filed the present application to set aside the exparte decree, dated 4.8.2017 and the same was also dismissed on merits by the impugned order. Challenging the above, this civil miscellaneous appeal has been filed by the defendant.

3. The learned counsel for the appellant would submit that the trial Court had dismissed the application filed by the defendant under Order IX Rule 13 CPC on the ground that the application is barred on the principle of issue of estoppel and therefore, the findings of the trial Court is contrary to the provisions of Order IX Rule 13 CPC and hence, he would pray to allow this appeal. The learned counsel has relied on the judgments rendered in the cases of 1) Narayana Gounder vs. Devaki and another reported in (1999 (II) CTC 439), 2) B.Janakiramaiah Chetty v. A.K.Parthasarathi and others reported in (2003) 5 Supreme Court Cases 641), 3) Bhanu Kumar Jain v. Archana Kumar and another reported in (2005) 1 Supreme Court Cases 787), and 4) G.Ratna Raj (D) by LR's. v. Sri Muthukumarasamy Permanent Fund Ltd and another reported in (2019 (4) CTC 122).

4. The learned counsel for the respondent would submit that the trial Court had rightly dismissed the application filed by the appellant to set aside the exparte decree. The learned counsel has relied on the judgment rendered in the case of Narayana Gounder vs. Devaki Ammal and another reported in (1999 (II) CTC 439).

5. The judgment and decree dated 04.08.2017 was not passed on merits. Non-utilizing the opportunity by the appellant alone cannot be the basis to reject his prayer, as what is more important is that the interest of justice is to be secured. Further, no prejudice would be caused to the respondent/plaintiff, if one more opportunity is given to the appellant/defendant to contest the case on merits by imposing cost.

6. In the result, this Civil Miscellaneous Appeal stands allowed on payment of cost of Rs.10,000/- (Rupees ten thousand



only) to the respondent/plaintiff within a period of two weeks from the date of receipt of a copy of this judgment, failing which this appeal stands dismissed automatically. The learned Principal District Judge, Puducherry, is directed to dispose of the suit as expeditiously as possible and preferably with a period of three months from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal District Judge,
Puducherry.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Prabhumukunth Arunkumar, Advocate Sr.No.5472

+1cc to Mr.V.Raghavachari, Advocate Sr.No.5844

C.M.A.No.1568 of 2019
and
C.M.P No.4467 of 2019

AK(CO)
RVM(16/02/2022)