



S.A.Nos.82, 83 & 84 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.Nos.82, 83 & 84 of 2012

Hafiz M.Abdul Samad

...Appellant in all S.As

Versus

Ameerunnisa Begum Saheba Endowment,
Rep. by its Secretary A.K.Shariff
No.76, Bharathi Salai,
Chennai – 600 005.

...Respondent in all S.As

Prayer in S.A.No.82 of 2012: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.10.2010 made in A.S.No.633 of 2008 on the file of the Additional District Judge, Fast Track Court – V, Chennai, reversing the Judgment and Decree dated 23.07.2008 made in O.S.No.459 of 2007 on the file of the I Assistant Judge, City Civil Court, Chennai.

Prayer in S.A.No.83 of 2012: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.10.2010 made in A.S.No.634 of 2008 on the file of the Additional District Judge, Fast Track Court – V, Chennai, reversing the Judgment and



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Decree dated 23.07.2008 made in O.S.No.967 of 2007 on the file of the I Assistant Judge, City Civil Court, Chennai.

Prayer in S.A.No.84 of 2012: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.10.2010 made in A.S.No.635 of 2008 on the file of the Additional District Judge, Fast Track Court – V, Chennai, reversing the Judgment and Decree dated 23.07.2008 made in O.S.No.5765 of 2006 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Abdulmubeen

For Respondent : Mr.V.Raghavachari

JUDGEMENT

These Second Appeals are preferred as against the Judgment and Decree dated 29.10.2010 made in A.S.Nos.633 to 635 of 2008 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, reversing the Judgment and Decree dated 23.07.2008 made in O.S.Nos.5765 of 2006, 459 & 967 of 2007 on the file of the I Assistant Judge, City Civil Court, Chennai.



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2.The appellant herein is the plaintiff and the respondent herein is the defendant in the suit.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The case of the plaintiff is that he is a person of reputed Islamic literature and he was working as Pesh Imam at the defendant Endowment's mosque holding unblemished service record for the past 16 years by serving under the defendant. On 03.02.2006, while delivering sermon in Friday congregation of prayers at the defendant Endowment's mosque, the plaintiff had quoted a reference that “Snake having spoken to Holy Prophet Mohammed”. After a few weeks, on 28.03.2006, he was called upon by the defendant's committee and Trustees of the defendant and they abused that the plaintiff should not deliver the sermon as he likes but the text of the sermons being approved by the committee of the defendant. This fact was brought to the notice of the worshipers at the mosque on 14.04.2006 during the Friday congregation and the worshipers called upon the President of the



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defendant to verify whether the Trustees of the defendant could dictate the Imam and whether they could give instruction to follow a very particular Hadees. But the President had not clarified the question raised by the worshipers (musallis). Thereafter, to the surprise of the plaintiff, a show cause notice was issued on 16.04.2006 calling upon the plaintiff to explain as to why disciplinary action would not be taken against him, to which a written explanation was given on 18.04.2006. However, without holding any enquiry, the defendant placed the plaintiff under suspension from 19.04.2006. On 22.04.2006, the plaintiff had given another explanation reiterating his stand and brought to the knowledge of the defendant that on 21.04.2006, the Government Chief Kazi had delivered the Friday sermon, where he himself confirmed before the worshipers that snake having spoken to Holy Prophet Mohammed.

5.The further case of the plaintiff is that, on 23.04.2006, the defendant had issued a letter informing that he would be given an opportunity to appear before the Trustees of the defendant, but there was no communication from the defendant. Therefore, on 31.05.2006, the plaintiff



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requested the defendant to give an opportunity. On 13.06.2006, the defendant issued a letter calling upon him to appear before the defendant on 20.06.2006. But, on that day, without assigning any reason, they sought an apology from the plaintiff for having brought the entire issue before the worshipers of the mosque. In the interest of peaceful relationship with the defendant, the plaintiff apologized before the Trustees of the defendant and thereafter, they informed that their decision would be informed shortly. On 22.02.2006, to the shock of the plaintiff, an office order dated 22.02.2006 was served on the plaintiff, terminating the services of the plaintiff and directed the plaintiff to vacate the quarters on or before 20.07.2006.

6. According to the plaintiff, his occupancy as a tenant in the suit property and his appointment of Imam are totally different and he was not provided with staff quarters immediately after his appointment as Pesh Imam. The defendant received an advance of Rs.1269/- at the time of inception of tenancy in the year 2004. Since the defendant refused to receive the rent through money order, a legal notice dated 07.11.2006 was



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issued by the plaintiff to the defendant to specify any bank account to enable the plaintiff to deposit the rents regularly in the said Bank. But the defendant had sent a reply on 10.11.2006 with false allegations. Such an act of the defendant is violation of the principles of natural justice. Hence, for the above reasons, the suit was filed seeking to declare that the order dated 22.02.2006 as null and void.

7.The case of the defendant is that the building bearing Flat No.F-2, at No.14/27 Feroze Sahib Street, Royapettah, Chennai - 600 014 belongs to the defendant Endowment Mosque. The plaintiff was an employee as Pesh Imam under the defendant's endowment and he was allowed to occupy a staff quarters as a licensee on a monthly license fee of Rs.512/-. His service was terminated with effect from 20.06.2006 and there was direction to vacate and hand over the possession of the flat to the defendant. The plaintiff instead of vacating the premises, had filed the suit challenging the termination order as well as seeking for permission to deposit the rent. Even the interim order granted in the suit was subsequently dismissed and C.M.A. was filed against the said interim order and no interim order was granted in



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that C.M.A. The Imam cannot claim as a matter of right to occupy the suit property. The Endowment had specifically allotted the staff quarters with an undertaking that he would vacate within a month from the date of termination of service. The present Pesh Imam is without staff quarters and he will be put to serious hardship. The present occupation by the Imam after the termination of his service is illegal and hence the suit is filed for delivery of vacant possession and for present and future damage at the rate of Rs.4000/- per month from August 2006 to till the date of delivery of possession.

8.The Trial Court after hearing all the three Suits together, framed the followings issues:

“1. Whether the termination order passed by the defendant on 22.06.2006 is valid and enforceable?

2. Is it true that the plaintiff Imam was provided with staff quarters or whether he is a tenant under the defendant?

3. Whether the plaintiff is entitled for the decree in O.S.No.5765/2006 and 459/2007 as prayed for?



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4. Whether the plaintiff is entitled for the decree in
O.S.No.967/2007 as prayed for?

5. To what other relief?"

9.Before the Trial Court, on behalf of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A17 have been marked. On behalf of the defendant, D.W.1 and D.W.2 were examined and Exs.B1 to B4 have been marked.

10.As far as above 1st issue is concerned, the Trial Court has come to the conclusion that the termination is not valid and is not in accordance with law. With regard to the provision of staff quarters, the Trial Court has held that, the plaintiff was in occupation of the suit property as tenant by paying sufficient rent.

11.The suit filed by the plaintiff in O.S.No.5765 of 2006 and O.S.No.459 of 2007 were decreed as prayed for and the suit filed by the defendant in O.S.No.967 of 2007 was dismissed with costs.



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12. Aggrieved over the said judgment and decree, the defendant preferred an appeal in A.S.No.633 to 635 of 2008. All the appeals were heard together and by virtue of common judgment dated 29.10.2010, the First Appellate Court, reversed the judgment and decree passed by the Trial Court and allowed the appeals with costs.

13. Against the judgment and decree passed by the First Appellate Court, the plaintiff filed all the present Second Appeals before this Court. This Court on 07.03.2022, admitted the Second Appeals by framing the following substantial questions of law:

“a) Whether the Lower Appellate Court was right in reversing the well considered judgment of the Trial Court without assigning proper reasons, as mandated under Order XLI Rule 31 of the Code of Civil Procedure?

b) Whether the Lower Appellate Court considered the fact that the appellant was terminated through Ex.A15 even without the same being backed



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up by a proper resolution passed by the Board of Trustees and hence the very termination itself is vitiated?

c) Whether the Lower Appellate Court failed to see that the eviction process was under taken after the termination of the appellant and if the termination itself is vitiated, the appellant is entitled to continue to be in possession and enjoyment of the property?

d) Whether there is any contract of personal service that exists between the appellant and the respondent, more particularly in the light of the judgment of the Hon'ble Supreme Court All India Imam Organisation and others v. Union of India and others, reported in AIR 1993 SCC 2086?

e) Whether the findings of the Lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence that was available on record?"

14. Thereafter, this Court on 13.09.2022, framed the following additional question of law:

“Whether the suit in O.S.No.5765 of 2006 is



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maintainable or bar under Section 14 of the Specific Relief Act”

15.Mr.R.Abdul, learned counsel appearing for the plaintiff in all the appeals would submit that the plaintiff was appointed as Imam of the defendant Endowment Mosque in the year 1990. On 01.01.2004, he paid rental advance and in this regard a receipt was also issued for a sum of Rs.1269/-. According to the plaintiff, though he was appointed as Imam as early as in the year 1990, he took defendant's premises for rent with effect from 01.01.2004. No notice was issued by the defendant under Section 106 of the Transfer of Properties Act to vacate the premises. On the other hand, the Suit was filed for recovery of possession. The receipt for rental advance has been marked as Ex.A1.

16.The learned counsel appearing for the plaintiff would further submit that the plaintiff during Friday congregation of the defendant mosque quoted a reference that “Snake having spoken to Holy Prophet Mohammed”. According to the plaintiff, the anecdote of the holy prophet that the snake spoken to him is in existence in certain literature including



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Quran. Since it is in the Quran, the same has been translated in Sirapuranam also. Since the said anecdote was available in the literature, the same was breached by the plaintiff during the Friday congregation to the parties concerned. In such circumstances, a show cause notice was issued to the plaintiff vide Ex.A7 on 16.04.2006, calling for the explanation. For the said show cause notice, the plaintiff has given a reply on 18.04.2006 and thereafter on 19.04.2006, by virtue of the office order, the Secretary of the defendant issued suspension order with immediate effect until further orders. On 21.04.2006, the Chief Kazi of Tamil Nadu delivered Friday prayer stating that the snake having spoken to the holy prophet which is also found in authentic text. However, without considering several requests of the plaintiff, the Secretary of the defendant issued the dismissal order against the plaintiff on 22.06.2006, which is marked as Ex.A15 and the plaintiff was asked to vacate the quarters. Hence, the suit was filed challenging the same.

17.The borne contention of the plaintiff is that, the paid Secretary cannot pass an order as if the Board of the Trustees have passed resolution



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to terminate the plaintiff. The plaintiff has performed his duties out of his expertise. He has duly qualified for the position of Imam. The Trustees are not qualified persons to decide whether the quote referred by the plaintiff at the time of the prayer is correct or not. The Chief Kazi of the Tamil Nadu while delivering Friday prayer has confirmed that the snake being spoken to the Holy Prophet. Without considering this aspect, the termination order was issued and the termination has to be set aside on the following ground:

17.1 No Board of Trustees were placed for examination before any of the courts and paid secretary has no authority to terminate the plaintiff.

17.2 The Trustees are not empowered to test the authenticity of the anecdote sermon during the Friday prayer since they are not expertise in Islamic literature.

17.3 The Chief Kazi of Tamil Nadu has also confirmed the statement quoted by the plaintiff in the Friday Congregation.



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17.4 The relationship between the plaintiff and the defendant waqf is not that of a master servant relationship. The service rendered by the plaintiff is not a contract of personal service as alleged by the defendant. The mosque waqf is a body under the control of the Tamil Nadu waqf Board. The Tamil Nadu waqf Board is a statutory body created under the statute called Waqf Act. Hence, the constitution of the defendant mosque waqf has a statutory flavour, which owes its governance and constitution by certain statutory provisions of the Waqf Act for the proper and sufficient maintenance and administration of the Waqf. Therefore, the learned counsel for the plaintiff would submit that the defendant mosque being a body created under a statute, the relationship between the plaintiff and the defendant cannot be held to be a contract of personal service and hence Section 14 of the Specific Relief Act 1963 before the 2018 amendment is not attracted to the present case of the plaintiff.

17.5 D.W.1, who was the President of the defendant mosque clearly



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admitted in his evidence that he is not well versed in Quran or any other sources of Islam and he also deposed that the termination order under Ex.A15 was passed by an employee who is not the competent authority to terminate the plaintiff. He also deposed that the anecdote of the Holy Prophet having spoken to the snake is in existence in certain literatures.

18.Further, he referred the judgment of the Hon'ble Supreme Court rendered in the case of *All India Imam Organisation and Others vs. Union of India* reported in (1993) 3 SCC 584.

19.He would submit that all these aspects have not properly appreciated by the First Appellate Court. The First Appellate Court though appreciated these facts, there was no finding on the above narrated aspect. Therefore, he would submit that the Appellate Court judgment is liable to be set aside and the judgment and decree passed by the Trial Court is required to be confirmed.

20.On the other hand, Mr.V.Ragavachari, learned counsel appearing



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for the defendant has strongly opposed the contention made by the learned counsel appearing for the plaintiff and submitted that the service rendered by the plaintiff is contract of service. Therefore, there is statutory bar under Section 14 of the Specific Relief Act and the suit in O.S.No.5765 of 2006 itself is not maintainable and the plaintiff is entitled only for the damage. In the event, the Court found that the termination is illegal or void, this aspect was well considered by the First Appellate Court and that is the reason why it reversed the judgment and decree passed by the Trial Court.

21.The learned counsel appearing for the defendant further advanced his argument stating that the plaintiff was terminated not on the pretext that he had interpreted the Quran by saying that the snake being spoken to the Holy Prophet but he repeatedly committed irregularities viz., he has refused to adhere the advise of the defendant endowment. The Board of Trustee on several occasion advised the plaintiff to read the sermon only from the 14 books provided by the defendant. However, the plaintiff has refused to do the same, therefore, he was suspended and he was called upon to appear before the committee and render an explanation. Only thereafter, the Board



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of Trustee passed resolution to terminate the plaintiff. Accordingly, the paid Secretary, who is well within his power has issued the termination order.

The Secretary has clearly stated in the office order dated 22.06.2006 that the meeting was held on 20.06.2022 and the explanation given before the committee was not satisfactory, which itself would suffice and there is no necessity to mark the resolution. Therefore, there is no error in the judgment passed by the First Appellant Court.

22.The appellant was provided accommodation only because he was appointed as Imam of the defendant Mosque, otherwise they would have leased out the property. As long as he is holding the position of Imam, he can continue as a tenant. Even in the agreement, it is clear that the employee ought to vacate the premises on termination of his employment. Therefore, he contended that this aspect was also well considered by the First Appellate Court.

23.He referred the following judgments and prayed for dismissal of the appeal.



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(i) ***Ram Piari vs. Municipal Committee, Pathankot and Ors.***

reported in ***MANU/PH/0085/1956.***

(ii) ***Mohammad Mustafa Ali Khan vs. District Board and Ors.*** R

reported in ***MANU/UP/0048/1933.***

(iii) ***Pearlite Liners Pvt. Ltd., vs. Manorama Sirsi*** reported in

MANU/SC/0016/2004.

(iv) ***Mothey Krishna Rao vs. Grandhi Anjaneyulu and Ors*** reported

in ***MANU/TN/0127/1954.***

24.Heard the learned counsel appearing for the plaintiff as well as the defendant and perused the materials available on record.

25.A mere reason for the issuance of termination order dated 22.06.2006 is that the plaintiff has quoted a reference in his Friday congregation that of the “Snake having spoken to the Holy Prophet Mohammed”. This made the Trustees to make a strong objection not to breach the same, thereby since he breached the same quote on the Friday congregation, they passed a resolution to terminate the plaintiff from the



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post of Imam and the Secretary of the respondent issued the termination order dated 22.06.2006 and in the termination order, he directed the plaintiff to vacate the suit property and handover the possession to the defendant.

26.A perusal of the office order would show that the Trustees at the meeting held on 20.06.2006, passed a resolution to terminate the plaintiff from service and also to give a direction to vacate the staff quarters, which is under the occupation of the plaintiff, on or before 20.07.2006.

27.A perusal of Ex.A1 would clear that it is the rental advance receipt issued by the defendant for a sum of Rs.1269/- on 01.01.2004. Ex.A6 is the ID card issued by the defendant to the plaintiff in November 1990. Though he was appointed in the year 1990, the quarters was allotted to the plaintiff only on 01.01.2004. If at all they intend to provide the staff quarters, they would have immediately taken steps to provide quarter after the appointment, but for more than 14 years, they have not provided accommodation. The defendant was provided the suit property only for rent at the request of plaintiff in the year 2004, after collecting the rental



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advance of Rs.1,269/- from the plaintiff. This aspect was not considered by the First Appellate Court and further, the First Appellate Court failed to consider the provision of accommodation after the period of 14 years at the request of the plaintiff but not for holding the post Imam, in which case the respondent ought to have provided accommodation in the year 1990 itself and they should not have collected rental advance, which would ultimately prove that the property was leased out by the respondent to the plaintiff. Hence, in the due course of law, the plaintiff cannot be evicted. In the present case, notice was also not issued under Section 106 of the Transfer of Properties Act to evict the plaintiff. On the other hand, the alleged resolution passed by the Trustee clearly prove that no notice was provided under Section 106 of the Transfer of Properties Act. Hence, the defendant is not entitled for the relief of recovery of possession except in accordance with law. This aspect was also not considered by the First Appellate Court, though it was considered by the Trial Court.

28.As far as the termination is concerned, as stated above, the reason for termination is that the plaintiff on the Friday congregation had quoted a



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reference that the “Snake being spoken to the Holy Prophet Mohammed”.

This statement was confirmed by the Chief Kazi of Tamil Nadu when he conducted the Friday congregation in the defendant mosque after the suspension of the plaintiff.

29.From a perusal of Ex.B3/Hotmail print message, would clear the sender of the mail is not known. Nothing is stated about the availability / non-availability of the story of Snake being spoken to the Holy Prophet. They confirmed that they are not aware of the pretext. Further, the defendant has wrongly considered as if they have confirmed that the said anecdote is not available in the literature. The First Appellate Court has not considered the aspect that the Chief Kazi of Tamil Nadu had confirmed the availability of the statement of the plaintiff in the literature. Even in the Sirapuram and in some of schools and colleges books, the statement of the plaintiff is available.

30.When such being the case, the Trustees without having any expertise on the aspect of sermon and other literature, they are not



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supposed to come to such conclusion to terminate the plaintiff from the service even after the statement was confirmed by the Chief Kazi of Tamil Nadu.

31.All these aspect was considered by the Trial Court and the First Appellate Court failed to appreciate these aspect and completely ignored to considered all these vital evidence in proper perspective. At this juncture, it would worthwhile to extract the relevant portion of the judgment rendered in the case of *All India Imam Organisation and Others vs. Union of India* reported in *(1993) 3 SCC 584*.

“Para 5. The Board is vested not only with supervisory and administrative powers over the wakfs but even the financial power vests in it. One of its primary duties is to ensure that the income from the waqf is spent on carrying out the purposes for which waqf was created.

Para 6.Mosques are wakfs and are required to be registered under the act over which the board exercises control. Purpose of their creation is community worship. Namaz or salat is the mandatory practice observed in every mosque. "Among the Five



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Pillars (Arkan,sg., Rukn) of islam, it holds the second most important position, immediately after the declaration of faith (Shahadah). The principal functionary to undertake is the imam. The objective and purpose of every Mosque being community worship and it being the obligation of Board under the Act to ensure that the objective of the wakf is carried on the Board cannot escape from its responsibility for proper maintenance of religious service in a mosque. To say, therefore the board has no control over the mosque or imam is not correct. Absence of any provision in the act or the rules providing for appointment of imam or laying down condition of their service is probably because they are not considered as employees. At the same time it cannot be disputed that due to change in social and economic set-up they too need sustenance. Nature of their job is such that they may required to be present in the mosque nearly for the whole day. There may be some who may perform the duty as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or profession or service for their livelihood except doing duty as imam. What should be their fate? Should they be paid any remuneration and if so how much and by whom? According to the board they are



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appointed by the muthawallis and therefore any payment by the Board was out of question. Prima Facie it is not correct as the letter of appointments issued in some states are from the Board. But assuming that they are appointed by the muthawallis the Board cannot escape from its responsibility as the muthawallis too under Section 36 of the Act are under the supervision and control of the board."

32.Considering all the above facts, this Court is of the view that the First Appellate Court has not given proper reason while setting aside the order passed by the Trial Court. In order to prove Ex.A15, no resolution was marked and therefore, the genuinity of such resolution is not known. When the plaintiff took a stand that no such resolution was passed, it is the duty of the defendant to prove the resolution but in the present case, no such resolution was marked, which is not in accordance with law. Hence, Ex.A15 is not proved in the manner known to the law and even if such resolution is passed, the Trustees have no authority to terminate the plaintiff by questioning the expertise of the plaintiff since the Trustees are not qualified to do the same.

33.As far as bar under Section 14 of the Specific Reliefs Act is



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concerned, the contention of the plaintiff is that the service provided by the plaintiff was not the contract of the personal service but on the other hand, the learned counsel appearing for the respondent submitted that the service provided by the plaintiff was in the nature of contract of personal service. The respondent being a waqf falls within the purview of the Waqf Act. The Hon'ble Supreme Court, in case of All India Imam Organisation (supra) held that the appointment of Imam which would falls under Section 36 of the Waqf Act are under the supervision and control of the Board. When such being the position of law, the service rendered by the plaintiff cannot be considered as contract of personal service so as to create a bar under Section 14 of the Specific Reliefs Act. Further, this Court is of the view that the relationship between the plaintiff and the respondent is not a matter of service relationship. Thus, the service provided by the plaintiff is not contract of personal service attracted under Section 14 of the Specific Reliefs Act. The very crucial aspect itself was not considered by the First Appellate Court in proper perspective and has wrongly held that service rendered by the plaintiff was contract of personal service. Hence, the judgment and decree passed by the First Appellate Court is perverse on the



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face of it and the same is called for interference.

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34.In view of the above, the termination order dated 22.06.2022 is not valid and enforceable. The judgments referred by the defendant is not applicable for the fact of the case in hand. Accordingly, all the question of law is answered in favour of plaintiff and he is entitled for reinstatement.

35.In the result, all the appeals are allowed and the judgment and decree passed by the First Appellate Court is set aside. Consequently, the judgment and decree passed by the Trial Court is restored. No costs.

01.11.2022

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Index : Yes / No

Internet : Yes / No

Speaking Order / Non Speaking Order

To

1.The Additional District Judge,
Fast Track Court – V, Chennai.

2.The I Assistant Judge,
City Civil Court, Chennai.

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KRISHNAN RAMASAMY, J.

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