



WEB COPY



A.No.1547 of 2022

in C.S.No.69 of 2022

Reserved on	30.03.2023
Delivered on	05.06.2023

K.KUMARESH BABU, J.

The instant application has been filed by the applicant/plaintiff seeking to set aside the Judgment and Decree dated 22.08.2022 dismissing C.S.No.69 of 2022 as withdrawn by the plaintiff and consequently order restoration of the above suit on the file of this Court.

2.Heard Mr.V.Raghavachari, learned Senior Counsel appearing for Mr.J.Kingsly Solomon, learned counsel for the applicant and Mr.V.Prakash, learned Senior Counsel appearing for Mr.Adrian D.Rozario, learned counsel for the respondents.



WEB COPY

3.Mr.V.Raghavachari, learned Senior Counsel would submit that while the suit was pending, the defendants had reached out to the plaintiff seeking to amicably settle the matter. The defendants had also promised to revoke the order of suspension and reinstate the plaintiff as Bishop of Thoothukudi Nazareth Diocese. Hence, the plaintiff had filed a memo on 09.08.2022, wherein the plaintiff had also reserved his right to approach this Court to reopen the suit on their failure to revoke the order of suspension. He would further submit that since the memo which was served upon the defendants were found to be little harsh, they had requested the plaintiff to modify the memo. Hence a fresh memo dated 17.08.2022 had been filed, wherein the plaintiff had expressed his desire to exhaust the alternative remedy which is available to the plaintiff under the constitution of the first defendant for trial of Bishops and in lieu of alternative remedy, had sought seeking permission of this Court to withdraw the suit. The suit had been



WEB COPY

dismissed as withdrawn. However, after dismissal of the suit, the defendants changed their colour and refused to revoke the order of suspension passed against the plaintiff.

4. When questioned, it was informed by the defendants that the judgment of this Court did not record the memo of withdrawal. Hence, at the request of the counsel for the plaintiff, the suit was again listed “for being mentioned” and a mention had been made to this Court. But, however, this Court had felt that there was no necessity to clarify the judgment of withdrawal. The respondents/defendants had gone back on their promises for revocation of suspension. The Synod Court was also not constituted due to the inconvenience of some of the members and hence, there is a delay.

5. He would further submit that the idea of convincing the plaintiff to withdraw the suit under the promise of revoking the order of suspension has been



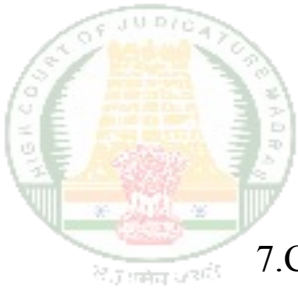
WEB COPY

played with an intention to deny the plaintiff's rights, a misrepresentation and false promise given by the defendants, particularly, the defendants 2 and 12 had caused severe prejudice to the plaintiff. Hence, he had been compelled to file the present application to set aside the Judgment and decree dated 22.08.2022 and consequently to restore the suit to the file of this Court to be dealt with on merits and in accordance with law.

6. In support of his contentions, learned Senior Counsel for the applicant has relied upon the following judgments:

(i) In the case of *Rattan Bai and Another vs. Ram Dass and Others* reported in *(2012) 3 SCC 248*.

(ii) In the case of *Jet Plywood (P) Ltd. And Another vs. Madhukar Nowlakha and Others* reported in *(2006) 3 SCC 699*.



WEB COPY

7. Countering his arguments, Mr.V.Prakash, learned Senior Counsel appearing on behalf of the respondents would submit that there has been no promise on the part of the respondents to revoke the order of suspension that had been passed against the plaintiff. The plaintiff had unilaterally taken a decision and had filed a memo dated 17.08.2022 wherein, the applicant had simpliciter sought to withdraw the suit to exercise the alternative remedy before the Synod Court. He would also submit that the suit had not been withdrawn based upon the memo and had been withdrawn based upon the endorsement made by the learned counsel for the plaintiff. When an attempt was made by the learned counsel for the applicant to record the memo by way of listing the matter “for being mentioned”, the same was opposed to by the defendants stating that there would be no bar for the plaintiff to approach the first defendant to avail the alternative remedy. Recording the same, this Court left it open to the plaintiff to avail the alternative remedy and ordered there was no necessity for any clarification in the judgment dated 22.08.2022.



WEB COPY

9. In support of his contentions, learned Senior Counsel for the respondents has relied upon the following judgments:

(i) In the case of *A. Shameem Ahmed and Others vs. A. Mohammed Hashim* reported in *2015 (1) MWN (Civil) 38*

(ii) In the case of *Ram Prakash Agarwal and Another vs. Gopi Krishnan (Dead through Lrs.) and Others* reported in *(2013) 11 SCC 296*.

(iii) In the case of *Lakshmi vs. Khader Bahsa* reported in *(2001) 2 CTC 203*

10. Various judgments have been cited across the bar in support of their contention, which I do not propose to traverse upon in view of peculiar facts and circumstances of this case.



WEB COPY

11.I have considered the rival submissions made by the respective Senior Counsel for the respective parties and perused the materials available on record.

12.From the records available, it could be seen that the suit had been dismissed based upon the endorsement made by the learned counsel for the applicant/plaintiff. The endorsement made by the learned counsel for the applicant/plaintiff is as follows:

“The suit may be dismissed as withdrawn. The court fee paid by the applicant may be refunded.”

13.The suit had not been withdrawn on the basis of the memo that had been filed by the learned counsel for the plaintiff. Alleged memos filed by the learned counsel for the plaintiff dated 09.08.2022 and 17.08.2022 were perused by this Court. It could be seen that both the memos stated supra had been filed before this Court on 17.08.2022, the memo dated 17.08.2022 bears SR.No.22863 and the memo dated 09.08.2022 bears SR.No.22851. Even though there is an averment that



WEB COPY

a memo had been filed on 09.08.2022, it could be seen that the said memo had been presented before this Court only on 17.08.2022. Further an acknowledgement of receipt of copy of the memo is only made to the memo dated 17.08.2022, there is no acknowledgement of receipt of the memo dated 09.08.2022 by the learned counsel for the respondents. That apart, when a mention had been made before this Court seeking for a clarification of the Judgment and Decree dated 22.08.2022, learned counsel for the applicant/plaintiff had only relied upon a memo which is dated 17.08.2022, he had not mentioned about the memo dated 09.08.2022.

14.A reading of the memo dated 09.08.2022 would reveal an alleged understanding between the applicant and the respondents which is disputed by the learned Senior Counsel for the respondents. However, the memo dated 17.08.2022 is accepted by the learned Senior Counsel and had submitted that it is always open to the applicant/plaintiff to approach the Synod Court as it is the authority to deal with the disciplinary proceedings of Bishop.



WEB COPY

15.It is brought to the notice of this Court that the charges have been framed by the Synod Court on 20.04.2022. The plaintiff has approached this Court on 22.04.2022 to challenge the alleged charges framed on 20.04.2022 and also to declare the order of suspension as bad. As already noticed, the memo dated 09.08.2022 filed before this Court on 17.08.2022 seems to have not been served upon the counsel for the respondents as there is no endorsement to that effect, only the memo dated 17.08.2022 has been served on the counsel for the respondents. That apart, as rightly pointed out by the learned Senior Counsel for the respondents that the counsel for the applicant had only brought to the notice of this Court of the memo dated 17.08.2022 when the matter was listed “for being mentioned” on 22.09.2022.

16.It is also pointed out by the learned Senior Counsel for the respondents that the applicant/plaintiff had not filed his explanation to the charges framed by



WEB COPY

the Synod Court on 20.04.2022 inspite of him having been granted only 30 days time to submit his explanation. Only after an explanation is submitted by the applicant/plaintiff, the Synod Court could have dealt with the charges that has been framed by it against the applicant/plaintiff by enquiry. When the applicant had not submitted his explanation, he cannot be heard to complain that the Synod Court is not taking up the case of the applicant/plaintiff.

17.In such circumstances, I do not find any reason to entertain the application filed by the applicant/plaintiff as the applicant/plaintiff had consciously withdrawn the suit to avail the alternative remedy available.

18.In fine, the application is dismissed.

05.06.2023

pam



WEB COPY



K.KUMARESH BABU, J.

pam

Pre-delivery order in

A.No.1547 of 2022

in C.S.No.69 of 2022

05.06.2023