



WEB COPY

A.No.4552 of 2021
in
C.S.No.873 of 2018
SENTHILKUMAR RAMAMOORTHY, J

This application is filed to set aside the order dated 05.10.2021 and restore the suit on file.

2. The applicant states that the case was listed for the evidence of PW1. Initially, the person who was the Manager of the plaintiff resigned from the employment of the plaintiff. Thereafter, PW1 was examined in chief and Exs.P1 to P3 were marked. According to the plaintiff, PW1 could not be present for cross-examination on 20.09.2021, 23.09.2021, 24.09.2021, 28.09.2021 and 29.09.2021, both on account of COVID-19 symptoms and in order to take care of her girl child. For these reasons, the plaintiff seeks to set aside the order dismissing the suit for default.

3. The fourth defendant, which is the only contesting defendant, opposes the application. The fourth defendant submits that PW1 was present in relation to a connected case on 24.09.2021. Therefore, it is submitted that the reasons set out in the affidavit and better affidavit are untrue. In addition, the defendant points out that multiple opportunities were provided to the plaintiff to prosecute the suit, and that the same is



evidenced by the order dated 05.10.2021, which sets out the sequence of events leading to the dismissal of the suit in great detail.

4. The objections of the fourth defendant are not without merit. Nonetheless, it appears from the facts on record that PW1 was examined in chief. The dismissal of the suit undoubtedly causes great prejudice to the plaintiff. Therefore, the order dated 05.10.2021 is set aside and C.S.No.873 of 2018 is restored on the file of this Court on the following terms:

(1) the plaintiff is directed to ensure that PW1 is available for cross-examination by the fourth defendant from 16.02.2022 until 23.02.2022 on as many days as are necessary to complete the cross-examination. In case PW1 is unavailable, the plaintiff shall pay costs of Rs.50,000/- to the fourth defendant.

(2) The plaintiff shall pay a sum of Rs.5,000/- as costs to the fourth defendant on or before 18.02.2022.

5. A.No.4552 of 2021 is allowed on the above terms.

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11.02.2022



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