



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Eighteenth day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE DR.JUSTICE G.JAYACHANDRAN

C.M.P.Nos.18675 of 2021 in A.S.No.515 of 2010

AND CMP Nos.2522, 2524 and 2526 of 2022

in CMP Nos.5386, 5385 and 5384 of 2018 in A.S.No.515 of 2010

1 D.SAMUEL ROBERT
S/O.DURAISAMY.

[PETITIONERS IN ALL THE PETITIONS]

2 R.VELUMANI
W/O.D.SAMUEL ROBERT,

BOTH RESIDING AT
NO.302, 4TH STREET,
GANDHIPURAM, COIMBATORE TOWN,

NOW RESIDING AT NO.121,
5TH STREET EXTENSION,
GANDHIPURAM, COIMBATORE TOWN.

Vs

1 A.CHITHAMBARANATHAN (DIED)

[RESPONDENTS IN ALL THE PETITIONS]

2 C.DEVI
W/O.LATE CHITAMBARANATHAN

3 C.PARAMESHWARAN,
S/O.LATE CHITAMBARANATHAN

4 MS.ROHINI
D/O.LATE CHITAMBARANATHAN,

ALL ARE RESIDING AT
DOOR NO.26, 4TH CROSS,
RAJA NAGAR, GANAPATHY,
COIMBATORE.



Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 118 days in filing the set aside petition (IN C.M.P.No.18675/2021);

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(ii) To condone the delay 864 days in filing restoration application to restore in CMP.No.5386 of 2018 in AS.No.515 of 2010 (IN C.M.P.No.2522 /2022);

(iii) To condone the delay 864 days in filing restoration application to restore in CMP.No.5385 of 2018 in AS.No.515 of 2010 (IN CMP No.2524 of 2022) and

(iv) To condone the delay 864 days in filing restoration application to restore CMP No.5384/2018 in AS.No.515/2010 (IN CMP No.2526 of 2022).

Order : These petitions coming on this day for hearing upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.N.PONRAJ, Advocate for the Petitioners in all the Petitions and of MR.B.NEDUCHEZHIAN, Advocate for the Respondents in all the Petitions, the court made the following order:-

The appeal filed by the defendant was lost. His suit for specific performance came to be dismissed for default. On coming to know about the dismissal, the appellant had filed an application for readmission. Unfortunately, even that application was dismissed for non prosecution. In the said circumstances, the present applications are taken out to set aside the dismissal orders of the applications.

2.C.M.P.No.18675 of 2021 is filed to condone the delay of 118 days in filing to set aside petition. CMP Nos.2522, 2524 and 2526 of 2022 are filed to condone the delay of 864 days in filing the restoration applications to restore CMP Nos.5386, 5385 and 5384 of 2018 respectively.

3.Learned counsel for the respondents would submit that Order 41 Rule 23 of C.P.C. prescribes procedure for the appellant whose appeal dismissed for default and any order passed against the dismissal should be challenged before the Division Bench. In this regard, the learned counsel also wants to rely upon the judgment of this Court and the Supreme Court.

3. On perusal of these two judgments, this Court finds no relevancy of fact to the current case. As far as Order 41 is concerned, it is for appeal against original decree. Order 41 Rule 19 of C.P.C. enables the First Appellate Court to dismiss the appeal for non prosecution. If any appellant suffers such dismissal order, he has right to invoke Order 41 Rule 23 for readmission of the said



appeal. One peculiar fact in the present case, the appellant who resorted to Order 41 Rule 23 for readmission, again failed to pursue his application for restoration and allowed these applications to be dismissed for default and now, has come before this Court to restore those applications with delay.

4. Though there is patent negligence in pursuing the appeal, in order to afford an opportunity to the appellant to put forth his case, this Court is of the view that these applications are to be allowed on terms. Accordingly, all these applications are allowed on payment of costs of **Rs.10,000/- (Rupees Ten Thousand only)** payable by the petitioners/appellants to the Legal Services Authority, Chennai, on or before 28.02.2022. On such payment, the Registry is directed to prepare the pleadings set and list the matter on 01.03.2022 for reporting compliance.

-sd/-

18/02/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE ADDITIONAL DISTRICT JUDGE/
FAST TRACK COURT NO.1, COIMBATORE.

COPY TO

1 THE SECRETARY,
TAMIL NADU STATE LEGAL SERVICE AUTHORITY,
HIGH COURT, MADRAS-104.

2 THE SECTION OFFICER,
T&P SECTION,
HIGH COURT, MADRAS-104.

3 THE SECTION OFFICER,
VR SECTION, HIGH COURT,
MADRAS-104.

Order
in

C.M.P.Nos.18675 of 2021 in A.S.No.515 of 2010
AND CMP Nos.2522, 2524 and 2526 of 2022
in CMP Nos.5386, 5385 and 5384 of 2018 in A.S.No.515 of 2010

Date :18/02/2022

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