



A.No.3223 of 2022

**A.No.3223 of 2022**

**in**

**A.No.4841 of 2019 in C.S.No.270 of 1939**

**G. CHANDRASEKHARAN, J.**

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Application No.3223 of 2022 is filed to set aside the dismissal for default order dated 03.03.2021 in Application No.4841 of 2019 in C.S.No.270 of 1939.

2. The learned counsel for the applicant submitted that the Application No.4841 of 2019 was filed for directing the first respondent or an Advocate Commissioner to be appointed by this Court to call for and supervise the election for the post of Trustees for Sri Chinni Subbiah Chetty Trust as per the Scheme Decree dated 03.04.1940 in C.S.No.270 of 1939. After filing the counters on the side of the respondents, the matter was posted for arguments. Due to COVID-19, the case was postponed for argument and both side were ready. Due to full lockdown, the case could not be listed. After relaxation of COVID-19 partly, the Court started to function and there were certain restrictions. The applicant and the learned counsel for the applicant were affected by COVID-19 infection and admitted in hospital. They were not able to appear before this Court on 01.03.2021 and 03.03.2021, resulting in dismissal of the Application No.4841 of 2019.



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3. This application is opposed by the learned counsel for the respondents on the ground that this application itself is unsustainable on law. This application was posted for hearing on 08.11.2019, 11.11.2018, 10.12.2019, 19.12.2019, 28.01.2020, 12.03.2020, 26.03.2020, 23.09.2020, 15.10.2020 and 24.11.2020. Almost on all occasions the applicant's side made necessary representation. On 02.12.2020 and 09.12.2020, the respondents' side filed list of citations. At request of the petitioner, it was posted on 06.01.2021. Due to non-representation of applicant, it was posted on 27.01.2021 and applicant took two weeks time to file leave petition. Physical hearing was given on 27.01.2021, 17.02.2021 and finally on 01.03.2021. Ultimately this application was dismissed on 03.03.2021 for default. Physical hearings as well as virtual hearings were conducted and available to both parties and therefore, due to the non co-operation of the applicant alone, this application was dismissed.

4. Considered the rival submissions. The submission of learned counsel for the respondents whether Application No.4841 of 2019 is maintained by applicant, cannot be considered in this application. It is seen from the counter filed by the respondents that on the dates mentioned above, there was appearance on the part of the applicant and only on some occasions there was



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no representation. It is submitted that the learned counsel for the applicant as well as the applicant were affected by COVID-19 infection.

5. In such circumstances, this Court is of the considered view that an opportunity should be given to the applicant to decide the matter on merits. This Court is inclined to allow this application, on payment of cost of Rs.1000/- (One Thousand only) to the respondent/plaintiff. Failing payment, this application stands automatically dismissed without any further reference to this court.

6. Application No.4841 of 2019 is restored to file and post the matter for enquiry after two weeks.

**16.11.2022**

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