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CMP(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Wednesday, the Third day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice R.VIJAYAKUMAR

CMP(MD). No.933 of 2022

in

SA. No.1850 of 2002

M/s.Pandian Pottash Private Limited

Its Director V.Sooriyan .. Petitioner / Respondent

Vs

1. Tamil Nadu Electricity Board
Represented by its Superintending Engineer
Kamarajar Electricity Distribution Circle, Virudhunagar.
2. The Chairman, Tamil Nadu Electricity Board, 801 Anna Salai
Chennai-2. .. Respondents/Appellants

Prayer in CMP(MD). No.933 of 2022:-

This Civil Miscellaneous Petition filed under Order 41 Rule 21 and Section 151 of C.P.C., praying this Court, to set aside the Exparte Judgment passed against the Petitioner herein/Respondent in the above Second Appeal in S.A. No.1850 of 2002 dated 30/11/2021 and rehear the same.

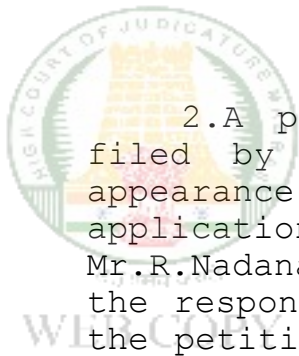
Prayer in SA. 1850/ 2002 :

This Second Appeal filed under section 100 of C.P.C., praying this Court, to call for the record relating to the judgement and the decree dt. 05.11.01 made in A.S.166/01 on the file of the Subordinate Court, Arupukottai reversing the judgement and decree dt. 22.06.2000 made in O.S.32/1997 on the file of the District Munsif Court, Arupukottai and set aside the same by allowing the appeal.

ORDER:-

This Civil Miscellaneous Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.G.Prabhu Rajadurai, Advocate for the Petitioner and of Mr.B.Ramanathan, Advocate for the respondents, this Court made the following order:

The present application has been filed under Order 41 Rule 21 of the Code of Civil Procedure seeking to re-hear S.A.No.1850 of 2002, which was disposed of on 30.11.2021.



2.A perusal of the said judgment discloses that the appeal filed by Electricity Board has been allowed. There was no appearance on the side of the respondent. In the present application, the petitioner has contended that originally, Mr.R.Nadanasabapathy, Advocate from Chennai, has filed a vakalat for the respondent in an appeal. According to the learned counsel for the petitioner herein, the said counsel had passed away and hence, nobody could appear on the date of hearing and the Judgment in S.A.No.1850 of 2002 has been passed without hearing the respondent. Hence, they were prevented by sufficient cause from appearing before the Court at the time of hearing in S.A.No.1850 of 2002.

3.Per contra, the learned counsel appearing for the Electricity Board has filed a detailed counter and contended that the petitioner have not even mentioned the name of the learned counsel in the affidavit and they have also not mentioned the date of death of the said counsel so as to prove that they were prevented by sufficient cause from appearing before the Court at the time of hearing the second appeal.

4.I have carefully considered the averments made in the affidavit and also in the counter affidavit.

5.A perusal of the judgment in S.A.No.1850 of 2002, dated 30.11.2021 clearly reveals that it is an *ex-parte* judgment and passed without hearing the respondent's counsel on the ground that there was no representation on the side of the respondent.

6.The petitioner herein in their affidavit have contended that the learned counsel on record, namely Mr.R.Nadanasabapathy, Advocate from Chennai, had passed away and he could not appear before the Court in S.A.No.1850 of 2002. Though the learned counsel for the respondent has contended that the actual date of death of the said counsel has not been mentioned, I do not find any reason to suspect the affidavit filed on the side of the petitioner herein.

7.In view of the aforesaid reason, C.M.P(MD).No.933 of 2022 in S.A.No.1850 of 2002 stands allowed. The judgment and decree in S.A.No.1850 of 2002, dated 30.11.2021, is hereby set aside. The Registry is directed to list the second appeal for hearing before the concerned portfolio Judge.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/08/2022

Sub Assistant Registrar(CS)



CMP(MD)



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TO

1. The Superintending Engineer
Tamil Nadu Electricity Board
Kamarajar Electricity Distribution Circle, Virudhunagar.

2. The Chairman, Tamil Nadu Electricity Board,
801 Anna Salai, Chennai-600 002.

Copy to:

1. The Subordinate Judge, Aruppukottai.
2. The District Munisif , Aruppukottai
3. The Section Officer, Judicial Section, Madurai Bench.

ORDER DATED : 03/08/2022

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ORDER

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CMP(MD) . No.933 of 2022
in
SA. No.1850 of 2002

Giving direction and etc.
as stated within.

RD/AR(18/08/2022) 3P 6C