



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Thursday, the Twenty Fifth day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr. Justice P. VELMURUGAN

CMP(MD). No. 7376 of 2022

in

AS(MD). No. 22 of 2011

1. M. Sasikumar

2. M. Sakthivel

3. M. Thankayyan

... Petitioners/Appellants

Vs

1 V. Rathinasekar

2 R. Gomathy

... Respondents/Respondents

Prayer in CMP(MD). No. 7376 of 2022:-

This Petition filed under Order 41 Rule 19 of C.P.C.,
praying this Court to restore the case in A.S.(MD). No. 22 of 2011
dated 04.07.2022.

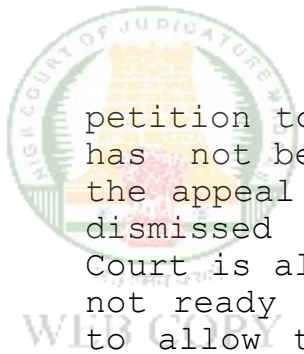
Prayer in AS(MD). No. 22 of 2011 :

This Appeal Suit filed Under Section 96 of C.P.C., praying
this Court to set aside the Judgment and Decree dated 30.07.2010
passed in O.S. No. 25 of 2007 on the file of the Additional District
and Sessions Judge, Fast Track Court No.1, Trichy and allow this
appeal.

ORDER:- This 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. T. Lenin Kumar, Advocate for the
Petitioners and of Mr. D. Nallathambi, Advocate for the respondents,
this Court made the following order:

The main appeal is pending from the year 2011 onwards. When
the appeal was listed on 04.07.2022 since the appellant counsel was
not ready to argue the appeal, the appeal was dismissed for non-
prosecution. Now, the appellant has filed the present petition to
set aside the dismissal order dated 04.07.2022 and to restore the
appeal on file.

2. Today when the petition is came up for hearing, the learned
counsel for the petitioner is not ready to argue the appeal. Though
the appeal was dismissed for non-prosecution since the appellant was
not ready to argue the appeal, even today, when the petition to
restore the appeal came up for hearing, today also, the learned
counsel is not ready to argue the appeal. Without making himself
ready to argue the appeal, how the learned counsel has filed the
petition to restore the appeal and what is the reason for filing the



petition to restore the appeal. It clearly shows that the appeal has not been filed for bonafide reason and it is filed only to keep the appeal pending for years together. Since the appeal is already dismissed for non-prosecution, when the petition is filed, this Court is also inclined to hear the appeal, however, the appellant is not ready to prosecute the appeal and hence, there is no necessity to allow the petition to restore the appeal and not keeping the appeal decades together. Already one decade has been completed and till date the appellant is not ready to argue the appeal and allowed the matter for dismissal. For the reasons stated above, this Court is not inclined to allow the petition to restore the appeal since the appellant is not ready to argue the appeal even today.

3. Accordingly, this petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/09/2022

Sub Assistant Registrar(CS)

To

1. The Additional District and Sessions Judge,
Fast Track Court No.1, Trichy.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+ 1 cc to Mr. D. Nallathambi, Advocate, Sr. No. 40857

ORDER DATED : 25/08/2022

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ORDER

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CMP(MD) . No.7376 of 2022

in

AS(MD).No. 22 of 2011

Giving direction and etc.
as stated within.

RD(07/09/2022) 2P 5C