



C.M.A.No.202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.202 of 2023

1. M/s.Redington (India) Ltd.
Represented by Subrogee /Power Agent
M/s.TATA AIG General Insurance Co. Ltd.
Samson Towers, II floor
No.403L, Pantheon Road
Egmore, Chennai-600 008.

2. M/s.TATA AIG General Insurance Co. Ltd.
Samson Towers, II floor
No.403L, Pantheon Road
Egmore, Chennai-600 008.

.. Appellants

Vs.

M/s.Blue Dart Express Limited
New No.11, Sterling road
Nungambakkam, Chennai-600 034.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(C) of C.P.C., praying to set aside the order and decretal order dated 23.09.2022, passed in I.A.No.1 of 2021 in O.S.No.3972 of 2019 on the file of XVI Additional Judge, City Civil Court, Chennai.



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For Appellants : Mr.G.Guruswaminathan
for M/s.Nageswaran and Narichania

For Respondent : Mr.Hemanth Ragu
for M/s.S.Ramasubramaniam Associates

JUDGMENT

The appeal is filed by the plaintiffs challenging the order and decretal order dated 23.09.2022, passed in I.A.No.1 of 2021 in O.S.No.3972 of 2019 on the file of XVI Additional Judge, City Civil Court, Chennai.

2.The plaintiffs in the suit O.S.No.3972 of 2019 are the appellants in the appeal. The suit is filed by the plaintiffs for recovery of a sum of Rs.60,00,000/- arising out of commercial transaction against the defendant. As the plaintiffs did not appear before the Court on 04.12.2019, the case was adjourned to 13.12.2019 and fresh Court notice was served to the plaintiffs. Again on 13.12.2019, there was no appearance on the side of the plaintiffs and hence as a last chance, the case was adjourned to 19.12.2019. On 19.12.2019, the plaintiffs appeared, but did not let in any evidence. Hence, a further chance was given and the case was adjourned to 03.01.2020 as a last chance. On 03.01.2020, there was no representation on the side of the plaintiffs. Hence, the case was again adjourned to 8.1.2020 and even on that day, the plaintiffs were not



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present, therefore the Court dismissed the suit for default on 08.01.2020. The plaintiffs, therefore filed I.A.No.1 of 2021 to restore the suit in O.S.No.3972 of 2019, which was dismissed for default on 08.01.2020.

3. According to the plaintiffs, the suit was originally filed before this Hon'ble Court in C.S.No.526 of 2016 and it was transferred to XVI Additional Judge, City Civil Court, Chennai. The plaintiffs received notice from the Court regarding the transfer on 03.01.2020. The counsel for the plaintiffs informed the plaintiffs that the suit was posted for trial on 08.02.2020 and the draft proof affidavit was sent to them for their perusal and approval. It was only when the plaintiffs checked the website of the Court that they came to know that the suit was dismissed for default on 08.01.2020 itself. Hence, the plaintiffs filed the above I.A.No.1 of 2021 to restore the suit on file.

4. The respondent in I.A.No.1 of 2021 disputed the plaintiffs' bonafides and submitted that in spite of reasonable opportunities, the plaintiffs had not appeared before the Court and therefore, the trial Court dismissed the suit for default.



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5. The trial Court after hearing the parties, dismissed the application for restoration on the ground that the plaintiffs were continuously absent in spite of several opportunities given for their appearance.

6. Aggrieved by the order dated 23.09.2022 passed in I.A.No.1 of 2021, the plaintiffs have filed the present appeal.

7. Learned counsel for the appellants/plaintiffs submitted that because of the clerical mistake committed by his clerk, the plaintiffs were not able to be present before the trial Court on 08.01.2020. The counsel further submitted that lapse on the part of the counsel or the clerk should not affect the rights of the client and therefore, prayed that an opportunity may be given to the plaintiffs to conduct the case on merits.

8. Learned counsel for the respondent/defendant on the other hand submitted that the trial Court was justified in dismissing the application as it found absolutely no bonafides in the application for restoration.

9. I have heard both the learned counsels. I am of the view that mistake of the counsel or the clerk should not prejudice the client and therefore, the



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appeal is allowed on terms. The appellants/plaintiffs are directed to pay a cost of Rs.5,000/- (Rupees Five thousand only) to the respondent through their counsel on or before 15.07.2023.

10. On the above terms, the appeal is allowed and the order dated 23.09.2022, passed in I.A.No.1 of 2021 in O.S.No.3972 of 2019 on the file of XVI Additional Judge, City Civil Court, Chennai, is set aside. There shall be no order as to costs.

26.06.2023

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To

1.The XVI Additional Judge
City Civil Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.J.,

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