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C.M.A.No.117 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.117 of 2018

M/s.SLO Industries Limited,
Rep.by its Executive Director,
Pratap Kumar Rakesh,
No.447/265, P.H.Road,
Aminjikarai, Chennai – 600 029.

... Appellant

v.

Kirloskar Electric Company Ltd.,
Plot No.29, P-6, Hirehalli
Industrial Area,
Hirehalli, Tumkur – 572 168,
Karnataka State.

... Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1(j) CPC r/w Rule 23 of Order 41 and 23(a) CPC to set aside the order and decree dated 28.06.2017 made in C.M.P.No.50 of 2016 in A.S.No.62 of 2015 on the file of the XIX Additional Judge, City Civil Court, Chennai against the judgment and decree dated 12.12.2014 passed in O.S.No.5430 of 2012 on the file of the XVI Assistant Judge, City Civil Court, Chennai.



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For Appellant : Mr.K.V.Sundararajan

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the dismissal order dated 28.06.2017 passed by the learned XIX Additional Judge, City Civil Court, Chennai in C.M.P.No.50 of 2016 in A.S.No.62 of 2015

2. When the appeal suit in A.S.No.62 of 2015 was listed for hearing on 10.11.2016 before the learned XIX Additional Judge, City Civil Court, Chennai, there was no representation for the appellant in the morning session and therefore, the case was passed over and when the matter was called again, the appellant did not turn up to argue, hence, the appeal was dismissed for default on 10.11.2016. Challenging the same, the appellant filed C.M.P.No.50 of 2016 for setting aside the order dated 10.11.2016 in A.S.No.62 of 2015 and to restore the appeal, which was dismissed on 28.06.2017. Aggrieved over the same, the present appeal has been filed.



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3. The learned counsel for the appellant submitted that the learned XIX Additional Judge, City Civil Court, Chennai, without considering the reasons stated in the accompanying affidavit filed in support of the petition, especially in paragraph Nos. 3 to 5, dismissed the civil miscellaneous petition.

4. Heard the learned counsel for the petitioner and perused the records.

5. Despite service of notice on the respondent, there is no representation either in person or through counsel.

6. The reasons stated in the accompanying affidavit are not satisfied and therefore, the lower appellate Court dismissed the petition and this Court is also not satisfied with the grounds taken by the petitioner. Now a days, no party want to allow the other party to enjoy the fruits of the decree one way or other way. After filing of the appeal, they keep the same pending for years together. In appeal, parties will not appear, it is only the



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counsel to co-operate and dispose of the same. When the appellant feels that they do not have any grounds to maintain the appeal, they keep the appeals pending for years together. When the appeal is listed for hearing out of much effort, if, they did not want to argue the matter, they allow the same to be 'dismissed for default', subsequently, they file a petition to restore the appeal. Once the appeal is restored, they keep the matters pending years together. In that way, so many appeals are pending before the Subordinate Courts as well as this Court.

7. Considering the facts and circumstances, this Court is not satisfied with the grounds raised by the appellant, however, in order to given one more opportunity to the appellant to restore the appeal in A.S.No.62 of 2015 on the file of the XIX Additional Judge, City Civil Court, Chennai, this Civil Miscellaneous Appeal is allowed with the following directions :

(i) The appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of A.S.No.62 of 2015 on the file of the learned XIX Additional Judge, City Civil Court, Chennai on or before



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31.07.2023. In the event of failure to pay the costs, the order passed by the learned XIX Additional Judge, City Civil Court, Chennai shall stand confirmed and this appeal shall stand dismissed automatically, without any further reference to this Court.

(ii) On compliance of the above said order, the learned XIX Additional Judge, City Civil Court, Chennai is directed to restore the appeal and to fix a date for hearing on 17.08.2023 and dispose of the same on merits and in accordance with law on or before 31.08.2023 and submit a compliance report before this Court.

(iii) Both the parties are directed to co-operate for early disposal.

(iv) There shall be no order as to costs.

17.07.2023

Note : Issue order copy on 27.07.2023

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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P.VELMURUGAN, J.

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To

1. The XIX Additional Judge,
City Civil Court,
Chennai.
2. The XVI Assistant Judge,
City Civil Court,
Chennai.

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17.07.2023