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A.No.3004 of 2023
in O.P.No.245 of 1985

K.KUMARESH BABU,J.

This Application has been filed challenging the order of the learned Master in directing the return of the copy application filed by the applicant.

2.Heard, the learned counsel appearing for the petitioner and perused the materials available on record before this Court.

3.Learned counsel appearing for the applicant would submit that he is a third party to the proceedings and therefore, he had taken out an application in A.No.1041 of 2023 to obtain the certified copies of the order made in O.P.No.245 of 1985. The said application was allowed by the learned Master and thereafter, a copy application had been filed, which came to be struck off as the stamps were not deposited within the stipulated time. Thereafter, the applicant made a fresh copy application. The learned Master returned the copy application as not maintainable. He would submit that the learned Master erred in holding that the only course open to the



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applicant is to seek restoration of the struck off copy application or again to invoke the provisions of seeking an application by filing a fresh application by the third party and only thereafter, the fresh copy application could be entertained.

4.He would rely upon the Order XI Rule 5 to contend that there is no bar for a fresh application to be made under the Rules. He would further submit that the learned Master had wholly erred in holding that the applicant has to first invoke Order X all over again and only thereafter, he could invoke the provisions of Order XI to file a copy application.

5.He would submit that the in the present case, he had already invoked the provisions of Order X Rule 2 and 3 and have been held to be entitled for a receipt of a certified copy. Only after such an order is passed by the learned Master, the applicant had made a copy application. Due to certain factors, he was not able to deposit of the stamps in that application and therefore, it was struck off and a fresh copy application had been filed



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only under the Order XI. The order of the learned Master requiring the applicant to again undergo the ordeal of invoking the powers under Order X or to restore is wholly misconceived. Hence, he would seek interference of this Court.

6.I have considered the submissions made by the learned counsel appearing for the applicant.

7.A reading of the provisions of the Madras High Court Original Side Rules particularly Order X would reveal that third party to the proceedings would be entitled to receive a certified copy of the order subject to satisfying the learned Master of this Court by way of an application. Once the application is ordered then the concerned applicant will have to make an application under the provisions of Order XI of the said Rules. Order XI Rule 5 reads as follows:-

“5.After computation of the necessary charges payable for the copies applied for has been made, a list showing the amount of fees required to be paid after



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giving credit to the Court fee label for Re.1, attached to the application, shall be prepared and signed by the Manager and affixed to the Court's notice board. Such lists will be affixed daily between the hours of 11 a.m. and 12 noon and will remain affixed for the five clear days. If the required fees are not deposited by 4 p.m. on the last of the five clear days, the application shall be struck off; unless it is restored on an application made to the Master for that purpose, a fresh application under these rules must be made for copies. Applications on which requisite additional charges have been paid shall be noted in the list as paid. These lists shall remain filed for six months in the record and shall then be destroyed.”

8.A thorough analysis of the aforesaid Rules indicates that when the required fees are not deposited within the stipulated time, then the application can be struck off and unless it is restored on an application made to the learned Master for that purpose, a fresh application under these Rules must be made for obtaining the copies. In the present case, the applicant had not chosen the route of trying to restore the application but had made a fresh application under the Rules. A interpretation of the



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aforesaid Rules particularly “if the required fees are not deposited by 4 p.m. on the last of the five clear days, the application shall be struck off; unless it is restored on an application made to the Master for that purpose, **a fresh application under these rules must be made for copies.**”

It envisages two options to the applicant when an application made under the said Rule is struck off:

(a) Restore it by way of an application made before the learned Master.

(b) A fresh application under these Rules.

9. The said Rule in my view do not envisage a position relegating the applicant back to the learned Master to file a fresh application under Order X and seek permission to receive the copies. It has already been held by the learned Master in such a proceedings that the applicant is entitled to receive the copies. When that be so, the present Rule stated supra would only mean a fresh copy application as provided under Order XI.



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Gba

10.In such view of the matter, I am of the opinion that the order passed by the learned Master is wholly unsustainable and therefore, set aside. The application is allowed and the Registry is directed to further proceed with the copy application made by the applicant. However, there shall be no order as to costs.

19.06.2023

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