



C.M.A.No.1925 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.10.2023

Pronounced on : 03.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1925 of 2023

AN.Shanthi

... Appellant /Petitioner / Plaintiff

Vs

1.Indian Bank

ARMB - II

Represented by its Assistant General Manager

No.55, Ethiraj Salai, Chennai - 600 008.

2.M/s.Asian Capital Consolidated Fund

Rep by its Proprietor Manohar Prasad

No.2, Sarangapani Street

T.Nagar, Chennai - 600 017.

3.J.D.A. Consultancy Services Pvt. Ltd.,

Rep by its Managing Director

I Floor, Casa Blanks Complex

Casa Major Road

Egmore, Chennai - 600 006.

4.Adhimoolam

5.Kannamal

6.Muniammal

7.Padmavathy

8.Iyyakannu

9.Navaneetha Ammal



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10.Baby Ammal

11.Subramani

12.Saroja Ammal

13.Ramesh

14.Murugappa Naicker

15.Ganagaduri Naicker

16.Murugesu Naicker

17.Kuppuswamy Naicker

18.Subramaniya Naicker

19.Elumalai Naicket

[Respondents 4 to 19 represented by their
Power of Attorney Agent P.L.Sundaram,
Proprietor of Palaniappa Estates
22/77, Venkatarathinam Nagar
Adyar, Chennai - 600 020.]

20.M/s.Ravishankar Industries (P) Ltd.,
Formerly known as Ravishankar Films (P) Ltd.,
Rep by its Managing Director
No.2, Sarangapani Street
T.Nagar, Chennai - 600 017.

21.Manohar Prasad

22.M/s.Asian Capital Consolidates and
Holdings Pvt. Ltd.,

Rep by its Managing Director

No.2, Sarangapani Street

T.Nagar, Chennai - 600 017.

... Respondents / Respondents /
Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of
Code of Civil Procedure, praying to set aside the fair and decretal order
passed in I.A.No.88 of 2016 in O.S.No.4966 of 2015 dated 27.03.2023 on



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the file of XV Additional City Civil Court, Chennai, and consequently allow I.A.No.88 of 2016 in O.S.No.4966 of 2015 on the file of XV Additional City Civil Court, Chennai.

For Appellant : Mr.P.L.Narayanan
Senior Counsel
Assisted by Mr.E.Hariharan

For Respondents : Ms.Shubharanjani Ananth for R3

JUDGMENT

The appellant herein challenges an order dismissing her application seeking restoration of her suit in O.S.No.4966 of 2015 by the XV Additional Judge, City Civil Court Vide his order dated 27.03.2023.

2.The appellant had laid a suit in C.S.No.1095 of 2008 on the file of this Court, wherein she challenged the sale certificate dated, 03.01.2007 issued by the DRT-1, Chennai in favour of the third respondent herein. This suit later came to be transferred to the XV Additional Court, wherein, it was taken on record as O.S.No.4966 of 2015. On 15.07.2016, the suit came to be dismissed owing to non-appearance of the plaintiff or her counsel. On 25.07.2016, the plaintiff filed I.A.No.88 of 2016 for restoration of the said



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suit. This application was supported by an affidavit, filed not by the appellant/plaintiff, but, by the junior counsel of the appellant's counsel. The averment made in the affidavit states that the deponent, the junior counsel, has wrongly noted the date of posting of the suit, which in turn has led to the dismissal of the suit for non-appearance on 15.07.2016.

3.The trial Court dismissed the said application essentially on the ground that an advocate may not file an affidavit for his client.

4.Heard both sides. In *V.P.Nagarajan Vs Prabhavathi* [1989-1-L.W.543], the Hon'ble Mr.Justice Srinivasan (as His Lordship then was) has deprecated the practice of advocates filing affidavit on behalf of the parties. However, there are contra authorities, and all of them came to be considered in *R.M.Bedi Vs Vijayeswari Textiles Ltd.*, [2007 (3) CTC 231] by Hon'ble Mr.Justice S.Manikumar (as His Lordship then was), and he accepted the affidavit filed by an advocate. The judgment in *R.M.Bedi case* was relied on by another Single Judge of this Court in *Arunagiri Vs M/s.Oriental Bank of Commerce* [order dated 21.02.2017 in CRP (PD) No.187 of 2014].



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5. Rule 13 Chapter II of Part-VI of Bar Council of India Rules framed under

the Advocates Act, 1961, bars the advocate from accepting a brief or to appear in a case in which he has reasons to believe that he will be a witness.

This bar under Rule 13 must have to be clarified. That a counsel may not file an affidavit for the litigant should essentially apply only to those circumstances where such counsel speaks to any facts which either constitutes or supports the cause of action of a litigation, or the defense offered by the other side. This is where the counsel can be blamed for identifying himself or herself with the interest of the litigant, and may come into conflict with the code of professional conduct of an advocate. However, as regards those facts that happened before the Court, such as failure to note the correct date, the counsel who commits the mistake is the most competent person to speak. It may be noted that in the second category of cases, a counsel does not identify himself with the client *vis-a-vis* the merit of the litigation, but only those facts involving court's procedure and practice.

6. This fine distinction should not be lost. And the District Judiciary is well advised to bear this in mind since frequently this Court comes across cases where an application gets dismissed because the deponent supporting the



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application happens to be the counsel of the party. To re-emphasize, it depends on the nature of the fact which an advocate - deponent speaks to.

7. Turning to the facts of the case, since junior-advocate of the appellant's counsel had filed the affidavit is stated to be the only ground on which the trial Court has dismissed the application, it cannot be sustained in view of what has been stated hereinabove. The appeal therefore, necessarily has to be allowed.

8. Accordingly, the appeal is allowed and the order dated 27.03.2023 in I.A.No.88 of 2016 in O.S.No.4966 of 2015 on the file of XV Additional City Civil Court, is set aside and the suit is restored to file. Since the suit is of the year 2015, the trial Court is directed to expedite the process of trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order



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N.SESHASAYEE.J.,

ds

To:

1. The Judge
XV Additional City Civil Court, Chennai.
2. The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.M.A.No.1925 of 2023

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