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C.M.A.No.4810 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4810 of 2019
and C.M.P.No.27641 of 2019

Subburayan

... Appellant/Petitioner/
Defendant

Vs

1. Gothandapani (Died)
2. Meganadane
3. Sendamare
4. Nirmala
5. A.Jegadambal
6. Conammal @ Manjula
7. Sivapaquame

(RR2 to R7 brought on record as Lrs of the deceased sole respondent viz Gothandapani vide Court order dated 08.03.2021 made in CMP.3737/2021 in CMA 4810/2019)

... Respondents/Respondents/
Plaintiff



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 06.09.2019 and made in I.A.No.335 of 2018 in O.S.No.27/2017 on the file of the III Additional District Judge at Puducherry.

For Appellant ... Mr.S.Vadivel

For Respondents ... No Appearance for R2-R7

JUDGEMENT

Aggrieved by the impugned award dated 06.09.2019 passed by the III Additional District Judge, Puducherry in I.A.No.335 of 2018, the present appeal has been filed by the claimant/appellant seeking enhancement of compensation.

2. It is the case of the petitioner that suit in O.S.No.27 of 2017 was filed by the deceased 1st respondent seeking cancellation of the settlement deed dated 22.07.2013 in respect of the subject property of the suit executed in favour of the petitioner on the file of the III Additional District Judge,



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Puducherry however, the Trial Court passed an ex-parte judgement as against the petitioner on the ground that he had failed to participate in the trial and had not filed the written statement. Subsequently, the petitioner filed I.A.No.335 of 2018 seeking to set aside the ex-parte judgment along with the written statement and the same was rejected by the Trial Court. Challenging the same, the petitioner has filed the present appeal.

3. Learned counsel appearing for the petitioner would submit that the petitioner had filed I.A.No.335 of 2018, for setting aside the ex-parte decree within the prescribed time limit of 30 days along with the written statement, however, without providing sufficient opportunity to the petitioner to putforth his case, the Trial Court had erroneously dismissed the I.A which is not sustainable. However, the petitioner is ready to pay the cost as fixed by this Court to the legalheirs of the deceased 1st respondent. Accordingly, he prayed for allowing the present appeal.

4. Though notice was served on the respondents and their name printed



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in the causelist, none appeared on behalf of the respondents. However, considering the pendency of the appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials on available on record.

5. Admittedly, the deceased plaintiff filed a suit in O.S.No.27 of 2017 for cancellation of the settlement deed dated 22.07.2013 which was executed in favour of the appellant herein. The said suit was decreed in favour of the deceased plaintiff and the appellant was set Ex-parte vide Judgment dated 09.04.2018. Subsequently, after filing the written statement, the appellant filed I.A.No.335 of 2018 seeking to set aside the ex-parte judgment dated 09.04.2018, however, the same was rejected vide order dated 06.09.2019. the grievance of the petitioner is that though I.A.No.335 of 2018 was filed within the prescribed time limit one month, no sufficient opportunity was given to him to putforth his case before rejecting the I.A. This Court, having gone through the materials available on record, taking into consideration the fact that the appellant had not appeared & participated in the proceedings, but, however, in order to strike the balance between the petitioner as well as the



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respondent/plaintiff, is inclined to impose a cost of Rs.5,000/- payable by the appellant to the legal heirs of the deceased 1st respondent. The petitioner is hereby directed to pay the said amount to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and file a proof of receipt of such payment before the Trial Court. Upon satisfaction of such payment by the appellant in favour of the 2nd respondent, the suit shall stand restored back to file of the learned III Additional District Judge, Puducherry and the court below is directed to proceed with the matter in accordance with law.

6. Accordingly, the Civil Miscellaneous Appeal is allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J

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To

- 1.Learned III additional District Judge,
Coimbatore.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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