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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1044 OF 2023

and

C.M.P(MD)No.14180 of 2023

Karuppaiah : Appellant/Petitioner/Respondent

.VS.

Chinnaiah(died)

1.Vishalatchi

2.Logambal

3.Saravanan

4.Thirunavukkarasu : Respondents 1 to 4 /Respondents
1 to 4/Claimants.

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code praying this Court to set aside the order made in I.A.No.519 of 2013 in M.C.O.P.No.39 of 2011, on the file of the Chief Judicial Magistrate Court, Pudukkottai.

For Appellant :Ms.R.Karthika

For Respondents :Mr.M.Suresh
1 to 4

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the order



passed in I.A.No.519 of 2013 in M.C.O.P.No.39 of 2011, on the file of the Chief Judicial Magistrate Court, Pudukkottai.

2.It is the submission of the learned counsel for the appellant that the appellant is the respondent in M.C.O.P.No.39 of 2011, on the file of the Chief Judicial Magistrate Court, Pudukkottai. The appellant was set exparte and an exparte award was passed on 08.01.2023. Against the passing of an exparte award, the Petitioner filed I.A.No.519 of 2013 to set aside the exparte order. In the said petition, the learned Tribunal passed a conditional order on 21.12.2020 directing the appellant to pay a sum of Rs.300/- to the respondents as costs on or before 5.1.2021, failing which, petition shall stand dismissed and then ordered to list the petition for hearing on 6.1.2021.Despite the appellant offering to pay the costs to the respondents, the respondents refused to receive the amount stating that the respondents intends to file an appeal as against the conditional order, dated 21.12.2020. However, as on today, there is no appeal filed. The matter was adjourned on several hearings to verify the filing of the appeal and on other grounds and finally on 4.1.2023, I.A.No.519 of 2023 was dismissed, for the reason that the conditional order was not complied with. This is not correct and a reasoned order. When the appellant offered the cost, it was the



respondents who refused to receive the said amount. For that refusal, the appellant cannot be penalised.

3.In response, the learned counsel for the respondents submitted that the proceedings of the Court below in I.A.No.519 of 2013, especially, proceedings, dated 25.11.2022 shows that the cost was not paid or remitted in the Court within the prescribed time.

4.This Court heard the rival submissions made on either side and perused the records.

5.Diary Proceedings in I.A.No.519 of 2013 shows that the conditional order, as stated above, was passed on 21.12.2020. Diary proceedings, dated 6.1.2021 reads that "cost paid. Respondent refused the cost. The respondents counsel represented that the respondents counsel is going to prefer an appeal". In the cost memo filed by the learned counsel for the appellant, similar endorsement was made by the learned counsel for the respondents.

6.It is now informed that the respondents counsel has not preferred any appeal. As per the conditional order, dated



21.12.2020, appellant could have deposited the costs amount in the Court. However, the appellant cannot be faulted or not paying the costs. The respondents refused to receive the cost stating that the respondents are going to file an appeal and no appeal is filed by the respondents till date.

7. In such circumstances, this Civil Miscellaneous Appeal is allowed and the order made in I.A.No. 519 of 2013 in M.C.O.P.No.39 of 2011, on the file of the Chief Judicial Magistrate Court, Pudukkottai is set aside and I.A.No.519 of 2013 is allowed. However, the appellant is directed to deposit Rs.300/- towards costs to the credit of M.C.O.P.No.39 of 2011, on the file of the Chief Judicial Magistrate Court, Pudukkottai and on such deposit being made, M.C.O.P.No.39 of 2011 is to be restored to file. On such deposit being made and restoration of the above M.C.O.P., the learned Chief Judicial Magistrate, Pudukkottai is directed to complete the enquiry in the above said M.C.O.P.No.39 of 2011 and dispose of the same as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

18.10.2023



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Index:Yes/No
Internet:Yes/No
NCC:Yes/No

vsn

To

- 1.The Chief Judicial Magistrate,
Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.1044 OF 2023
and
C.M.P(MD)No.14180 of 2023**

18.10.2023