



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Wednesday, the Twenty Sixth day of April Two Thousand
and Twenty Three

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PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
AND
The Hon`ble Mr.Justice K.K.RAMAKRISHNAN

CMP(MD)No.5103 of 2023
in
AS(MD)No.238 of 2009

1.Sadik Batcha
2.Noorjahan (Died)
3.Marjohn Beevi
4.Aziyam Mariyam

... Petitioners/Petitioners

(Memo dt.17.03.2023 in USR No.9756 is recorded, as 2nd Petitioner died and the Petitioners 1, 3 and 4, who are already on record, are recorded as Lrs of the deceased 2nd Petitioner vide Court Order dt.20.03.23 made in CMP(MD)No.9309 of 2022 in AS(MD)No.238 of 2009 by RSKJ & KKRKJ)

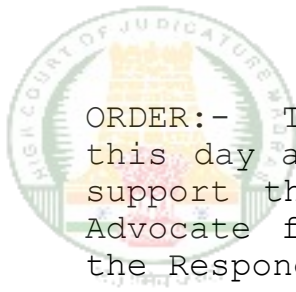
Vs

Dharmapuram Atheenam Mutt.,
Rep. by its Atheena Kartha
Srilasri Shanmuga Desika
Gnasambanda Paramacharia Swamigal,
Dharmapuram,
Mailadudurai Town
and Municipality.

... Respondent/Respondent

Prayer in CMP(MD)No.5103 of 2023 :- Civil Miscellaneous Petition filed under Section 41 Rule 19 of CPC., to set aside the First appeal in AS(MD)No.238 of 2009 which was dismissed for non prosecution on 23.03.2021 and restore the same.

Prayer in AS(MD)No.238 of 2009:- Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree, dated 08.07.2009 passed in O.S.No.104 of 2005 on the file of the Additional District and Sessions Court, Fast Track Court No.I, Thanjavur.



ORDER:- This Civil Miscellaneous Petition coming on for () on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.C.Padmaraj, Advocate for the Petitioner and of Mr.D.Nallathambi, Advocate for the Respondent, this Court made the following order:-

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This Civill Miscellaneous Petition has been filed to restore the First Appeal in A.S.(MD) No.238 of 2009 which was dismissed for non prosecution on 23.03.2021.

2. Heard Mr.C.Padmaraj, learned counsel appearing for the petitioners and Mr.D.Nallathambi, learned counsel appearing for the respondent.

3. In order to restore the Appeal Suit, the present application has been filed, where reason has been stated that, even though subsequently the counsel has been nominated, he could not join the hearing through Video Conferencing on the date of hearing and therefore, the Appeal Suit was dismissed for default.

4. Though the said reason has been stated, whether the counsel had been already nominated on 23.03.2021, and if so, the name of the counsel has not been stated in the affidavit.

5. Anyhow, since the valuable rights of the parties are involved in the main Appeal Suit, we think that, this petition can be allowed on term. Accordingly, this petition is allowed on term i.e., the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the Siddha Medical Centre attached to this Bench within a period of two weeks from the date or receipt of this order, failing which this petition shall stand dismissed without further reference to this Court.

6. On such condition, this petition is ordered.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/05/2023

Sub Assistant Registrar(CS)

SJ

To

The Additional District and Sessions Judge,
Fast Track Court No.I,
Thanjavur.

<https://www.mhc.tn.gov.in/judis>



Copy to:-

- 1.The Medical Officer,
Siddha Medical Center,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES).

ORDER DATED : 26/04/2023

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ORDER

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CMP (MD) No.5103 of 2023

in

AS (MD) No.238 of 2009

SI/(11.05.2023) 3P/ 6C