



C.M.A(MD)No.909 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.09.2023

PRONOUNCED ON: 22.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A(MD)No.909 of 2019**

Senthilkumar

: Appellant/Petitioner/Petitioner/  
Respondent

Vs

1.Pappathi  
2.P.Aiyamperumal  
3.P.Manimegalai  
4.Pandiyammal

: Respondents/Respondents/  
Respondents/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(c) C.P.C., against the order dated 26.03.2019 in I.A.No.883 of 2018 in I.A.No.631 of 2017 in M.C.O.P.No.301 of 2009, on the file of the Principal District Judge, Tiruchirappalli.



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For Appellant : Mr.S.Vinod Sathya Lazar

For Respondents :Mr.A.Arun Prasad

### **JUDGMENT**

This Civil Miscellaneous Appeal is directed against the order passed in I.A.No.883 of 2018 in I.A.No.631 of 2017 in M.C.O.P.No.301 of 2009, dated 26.03.2019, on the file of the Principal District Court, Tiruchirappalli, dismissing the petition filed under Order 9 Rule 9 C.P.C.

2. The respondents/claimants have laid the claim application seeking compensation for the death of one Balakrishnan, the husband of the first respondent and the father of the respondents 2 to 4 in a road accident. It is evident from the records that since the appellant/respondent has not chosen to file the counter statement, he was set exparte and that the learned Principal District Judge, Tiruchirappalli has passed an award dated 19.03.2013 directing the appellant/respondent to pay a compensation of Rs.1,99,000/- with interest and costs.



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3. It is not in dispute that the appellant/respondent has filed an application under Order 9 Rule 13 C.P.C., for setting aside the exparte award along with an application to condone the delay of 1615 days in filing the petition for setting aside the exparte decree, that the petition filed under Section 5 of the Limitation Act was taken on file in I.A.NO. 631 of 2017 and that when the said petition was posted on 04.09.2017 for notice of hearing and counter, since the appellant/respondent has not turned up and as there was no representation, the petitioner in I.A.No.631 of 2017 was ordered to be dismissed on 04.09.2017.

4. It is further evident from the records that the appellant/respondent has filed an application in I.A.No.761 of 2017 under Order 9 Rule 9 C.P.C., to restore the petition in I.A.No.631 of 2017, which was dismissed for default and that as per the order of the Tribunal, dated 12.10.2018, the petition in I.A.No.631 of 2017 was restored to file. It is also not in dispute that after restoration of the petition in I.A.No.631 of 2017, it was posted to 08.11.2018 again for notice of hearing and counter and on 08.11.2018, as the petitioner was called absent and as there was no representation, the said petition was again dismissed for default. The appellant/respondent has again filed an



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application in I.A.No.883 of 2018 under Order 9 Rule 9 C.P.C., to restore the petition in I.A.No.631 of 2017, which was dismissed for default on 08.11.2018.

5. The appellant/petitioner's main contention is that he was not in good health and hence, he could not appear before the Court on 08.11.2018 and that his absence on that day is neither wilful nor wanton and that therefore, the petition has to be restored. The respondents/claimants have raised objections that the above petition came to be filed in order to evade the payment of award amount in the E.P., petition and that since E.P., is in the stage of arrest, the above restoration application is liable to be dismissed. During enquiry, the appellant as well as the respondents have adduced neither oral nor documentary evidence. The learned trial Judge, upon considering the pleadings of the parties and on hearing the arguments of both sides, has passed the impugned order dated 26.03.2019 dismissing the petition. Aggrieved by the said dismissal, the appellant has come forward with the present Civil Miscellaneous Appeal.



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6. It is seen from the records that when the stay petition was taken up for hearing, the learned Judge of this Court has passed a conditional order of interim stay, dated 13.12.2019, directing the appellant to deposit a sum of Rs.1,00,000/- to the credit of M.C.O.P.No.301 of 2019, on the file of the Principal District Court, Tiruchirappalli within a period of two weeks from the date of receipt of a copy of that order, failing which, the interim stay granted shall stand vacated automatically without reference to the Court and that in pursuance of the said directions, the appellant has deposited Rs.1,00,000/- on 09.01.2010 and a memo to that effect was filed and recorded.

7. It is pertinent to note that the claim petition came to be filed only against the appellant/respondent seeking compensation for the death of the husband of the first respondent. As rightly pointed out by the learned Counsel for the appellant, I.A.No.631 of 2017 was dismissed on the first hearing date of the said petition on 04.09.2017 and after restoration of the same, when the said petition was posted for the first time for giving notice of hearing and counter on 08.11.2018, the petition was again dismissed. As already pointed out, the main contention of the



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appellant is that he was not well at that time and as such, he could not appear before the trial Court. As rightly pointed out by the learned Counsel for the appellant, the respondents have not raised any serious objection.

8. Considering the above facts and circumstances, and also the fact that the restoration petition in I.A.No.631 of 2017, was ordered to be dismissed twice for not giving notice of hearing and taking note of the nature of the objections raised and also the fact that the appellant had deposited a sum of Rs.1,00,000/-, during the pendency of the appeal, this Court is inclined to give another opportunity to the appellant to prosecute the petition in I.A.No.631 of 2017 filed under Section 5 of the Limitation Act and as such the impugned order of the trial Court is liable to be set aside.

9. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order passed in I.A.No.883 of 2018 in I.A.No.631 of 2017 in M.C.O.P.No.301 of 2009, dated 26.03.2019, on the file of the Principal District Court, Tiruchirappalli, is set aside. The trial Court is directed to restore the petition in I.A.No.631 of 2017, conduct enquiry and dispose



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of the petition within a period of two weeks from the date of receipt of a copy of this judgment. No costs.

**22.09.2023**

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

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To

1. The Principal District Court, Tiruchirappalli,
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.



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**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

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