

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Monday, the Twenty Sixth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD). No.12495 of 2022

in

S.A(MD).No.103 of 2013

1.Muthaiyah,

2.Devaraj,

... Petitioners/Appellants

Vs

1 Angamuthu,

2 Padmavathi

... Respondents/Respondents

Prayer :-

This Petition filed under Order XLI Rule 19 and Section 151 of C.P.C to restore the S.A. (MD). No. 103 of 2013 which was dismissed for default 23.04.2018.

Prayer in SA(MD). 103/ 2013 :

Second appeal filed under section 100 of C.P.C against the judgment and decree dated 22/12./2011 in A.S.No.278 of 2007 on the file of I Additional Subordinate Judge, Tiruchirappalli confirming the judgment and decree dated 27/06/2007 in O.S.no.124 of 2004 on the file of the District Munsif Court, Cum Judicial Magistrate Lalgudi

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.Shankar Murali, Advocate for the Petitioner and of Mr.M.Saravanan, for Respondent this Court made the following order:

This application is filed to restore the second appeal which was dismissed for default on 23.04.2018.

2. When the appeal was came up for hearing on 23.04.2018 this Court passed the following order:-

"When the matter was listed earlier on 06.04.2018, there was no representation for the appellant. Hence, the matter was directed to be posted on 13.0.40218. However, on 13.04.2017, at request, the matter was adjourned by a week. Thereafter, the matter was listed on 20.04.2018 and there was no representation for the appellant. Hence, the Registry was directed to post the matter under the caption "for dismissal" on 23.04.2018.

Even, today, there is no representation for the appellants, despite the fact that the matter is posted under the caption "for dismissal". Hence, this Court has no other option, but to dismiss this appeal for non-prosecution.

2. Accordingly, this appeal suit is dismissed for non-prosecution. However, there is no order as to costs."

3. Now, the petitioner has filed the present application to restore the second appeal. Despite sufficient opportunity given to the appellant to prosecute the appeal, the appellants have not shown any interest to prosecute the appeal.

4. This Court while dismissing the second appeal clearly stated that more than four occasions the Court has given an opportunity to the counsel to get on with the appeal, but the appellants counsel adamantly not co-operate with the Court to get on with the appeal and the Court no other option to dismiss the appeal for non-prosecution. The suit is for specific performance. The respondent got execute the sale deed through Court and also execution petition was filed and taken delivery and there is no reason to restore the appeal.

5. Now, in this application the reasons stated in the accompanying affidavit filed in support this application is not satisfied and hence, this application is dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)

TO

1. I Additional Subordinate Judge, Tiruchirappali

2. The District Munsif -Cum- Judicial Magistrate, Lalgudi

+1CC to Mr.N.S.Ashok Kumar, Advocate, SR.No. 31050 dated 27.06.2023

ORDER DATED : 26/06/2023

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ORDER

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CMP(MD). No.12495 of 2022

in

SA(MD).103 of 2013

Giving direction and etc.

as stated within.

KB(04.07.2023) 2P 4C