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O.S.A.No.103 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR. JUSTICE **R. SUBRAMANIAN**
AND
THE HONOURABLE MR. JUSTICE **R.SAKTHIVEL**

O.S.A.No.103 of 2022

M.A.Nagoor Meeran

... Appellant

Vs.

1.K.M.Abdul Wahab
2.M.A.Syed Ali Ahamed
3.M.A.Yusuf Ansary

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w Clause 15 of Letters Patent against the order dated 23.03.2022 passed in C.S. No.279 of 2021.

For Appellant : Mr.Shabeer Ali H
for M/s.Sarvabhauman Associates

For Respondents : Mr.K.Prabu
for M/s.M.Mohideen Pitchai

JUDGMENT

(Judgment of the Court was delivered by **R. SUBRAMANIAN, J.**)

The order under challenge in this appeal reads as follows:

*'Written statement not filed by the
defendant. The defendant is set ex-parte.*



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Registry is directed to list the matter before the concerned learned Master for recording evidence.'

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2. The main contention of the appellant in this appeal is that the suit summons were not served on the appellant at any point of time. Therefore, the period fixed under Rule 1 Order V of the Original Side Rules does not start running. In such view of the matter, according to learned counsel appearing for the appellant, learned single Judge was not right in denying the appellant the opportunity to defend and directing the matter to be proceeded exparte. The fact that the suit summons were not served on the appellant is conceded by the learned counsel for the respondents. It is stated that the private notice was served in the application stage. That by itself, in our considered opinion, would not amount to service of suit summons so as to enable the Court to deny the defendant the opportunity to defend due to lapse of time. Rule 1 Order V of Original Side Rules reads as follows:

'If the defendant intends to defend the suit, he shall, within the period limited by the summons served on him, file in Court a written statement setting out the grounds of his defence in the form prescribed by the Code, and also stating his address for service:

Provided that a defendant may file his written statement within a further period of five days if the plaintiff or his advocate consents and signifies such consent by endorsement on the written statement. The



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costs of obtaining and granting consent shall be costs in the cause.

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The defendant shall, within the said period, give notice to the plaintiff that he has filed a written statement, and of his address for service.'

3. Rule 5 Order V of Original Side Rules reads as follows:

'After the expiration of the time limited by Rule 1 or Rule 3 of this Order, a suit shall be posted in the list before the Master. If no written statement has been filed by the defendant under Rule 1 or the plaintiff under Rule 3, the Master shall enter the suit in the list of 'undefended causes' in the former case and the set-off or counter-claim in the list of 'undefended causes' in the latter case unless he grants further time for filing a written statement on application by the concerned party accompanied by an affidavit explaining the delay. The Master shall not grant extension of time exceeding six weeks from the date on which the written statement was originally due to be filed.'

4. A combined reading of the above two provisions makes it clear that the service of suit summons (plaint) is mandatory to enable the Court to deny the opportunity to defend on the ground of lapse of time. Since the fact that the suit summons were not served is admitted, we do not think that the learned Judge was



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right in passing the order directing the matter to be placed before the Master under the caption 'undefended causes'. Hence the said order is set aside and the written statement that has been filed on 23.03.2022 is directed to be taken on file *de hors* the question of limitation and the Court will proceed to frame issues and dispose of the suit in accordance with law.

5. The Original Side Appeal stands allowed to the extent indicated above. No costs.

(R.S.M., J.) (R.S.V., J.)
29.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.



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