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O.S.A.Nos.203 & 204 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

O.S.A.Nos.203 & 204 of 2022

N.Sekar

.. Appellant in both O.S.A.s

Vs.

1.The Chief Executive Officer
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.8, Gandhi Irwin Road
Chennai 600 008

2.M/s.Auto Transport
Rep. by its sole proprietor
Hargovind Kaitan
No.25, Thiruvottiyur High Road
Chennai 600 021
Now at Mahalla
Boarding Canal Road
P.O and Town
Patna 800 001

.. Respondents in both O.S.A.s

Original Side Appeals filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent, against the common order dated 07.04.2022 passed in A.Nos.185 & 186 of 2022 in A.Nos.4082 & 4083 of 2013 in C.S.D.No.23136 of 2013.



O.S.A.Nos.203 & 204 of 2022

For Appellant : Mr.S.Selvaraj
For 1st Respondent : Mr.Edwin Prabkar
Special Government Pleader (C.S.)
assisted by Mr.R.Sidarth
Government Advocate

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

These appeals arise from a common order dated 07.04.2022 passed by the learned Judge in A.Nos.185 and 186 of 2022 in A.Nos.4082 and 4083 of 2013 respectively, in C.S.D.No.23136 of 2013.

2.Originally, the appellant preferred a suit for specific performance. Along with the same, he filed two applications viz., A.No.4082 of 2013 seeking leave to sue the suit, and (ii)A.No.4083 of 2013 for grant of ad interim injunction restraining the respondents from transferring, assigning, mortgaging, charging or otherwise creating any third party interest over the scheduled mentioned property till the disposal of the suit. Both the said applications were dismissed for non-prosecution on 24.01.2017. Thereafter, the appellant preferred the applications viz., A.Nos.185 and 186 of 2022 for condoning the delay of 1771 days in filing the applications to restore A.Nos.4082 and 4083 of 2013 in C.S.D.No.23136 of 2013, on file. When these condonation of delay



O.S.A.Nos.203 & 204 of 2022

applications came up for hearing on 07.04.2022, the learned Judge allowed the same, subject to deposit of costs of Rs.2,50,000/- each. Aggrieved by the same, the appellant is before this court with the present original side appeals.

3.The learned counsel for the appellant at the outset submitted that without assigning any reason, the learned Judge has directed the appellant to deposit a sum of Rs.2,50,000/- for each of the applications totalling Rs.5,00,000/- towards costs for condoning the delay in filing the restoration applications, which is excessive and exorbitant. The learned counsel further submitted that after the dismissal of the applications for non-prosecution on 24.01.2017, the restoration applications were immediately filed by the appellant, but the same were returned by the Registry at the SR stage for clarification and the applications were represented on 12.12.2018. Thereafter, the appellant believed that his previous counsel was following the cases. However, during November, 2021, his previous counsel without informing the stage of the case, gave change of vakalat. Pursuant to the same, the appellant engaged the present counsel and got the applications numbered for hearing. Thus, the delay occurred in filing the restoration applications is neither wilful nor wanton. Though the learned Judge was inclined to condone the delay, in the interest of justice and provide an opportunity to the appellant to defend the case



O.S.A.Nos.203 & 204 of 2022

on merit, he has erred in imposing a costs of Rs.2,50,000/- for each applications in total Rs.5,00,000/- by the order impugned herein. It is also the submission of the learned counsel that the appellant is unable to mobilise the funds to deposit such a huge amount. With these submissions, the learned counsel prayed to set aside or modify the order passed by the learned Judge.

4.This Court has also heard the learned Special Government Pleader (C.S.) appearing for the first respondent, who submitted that the learned Judge properly analysed the facts and circumstances of the case and passed the impugned order, which does not call for any interference by this Court.

5.Taking note of the facts and circumstances of the case, this court is of the view that the delay occurred in filing the restoration applications is enormous and hence, the learned Judge has rightly imposed costs on the appellant. However, considering the submissions made by the learned counsel for the appellant, more particularly that the amount directed to be deposited by the appellant is a huge sum of Rs.5,00,000/- and he is unable to mobile funds to comply with the same, this court is inclined to modify the order of the learned Judge by directing the appellant to deposit a sum of Rs.75,000/- towards costs



O.S.A.Nos.203 & 204 of 2022

for each of the applications, totalling to Rs.1,50,000/- for condoning the delay in filing the applications for restoring the applications in A.Nos.4082 and 4083 of 2013 in CS D. No.23136 of 2013, within a period of two weeks from the date of receipt of a copy of this judgment.

6.With the aforesaid modifications, both the Original Side Appeals are disposed of. No costs.

[R.M.D,J.] [M.S.Q, J.]
22.01.2024

Neutral Citation : Yes/No
gya

To

The Chief Executive Officer
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.8, Gandhi Irwin Road
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