



WEB COPY



CMA.No.870 of 2024

In the High Court of Judicature at Madras

Dated : 06.6.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.870 of 2024
& CMP.No.8012 of 2024

1.K.R.S.Anusaranya
2.K.R.S.Sivagowtham

...Appellants

Vs

1.Thiru K.R.Sivadhesikan
2.Tmt.K.R.S.Prema

3.The Branch Manager,
Indian Bank, DB Road,
R.S.Puram, Coimbatore-2.

...Respondents

APPEAL under Order XLIII Rule 1(c) of the Civil Procedure Code
against the order dated 31.1.2023 passed in I.A.No.3 of 2021 in O.S.
No.516 of 2014 on the file of the Fourth Additional District Court,
Coimbatore.

For Appellants	:	Ms.R.Pushpalatha
For R1 & R2	:	Ms.P.Sumathi
For R3	:	Mr.T.Sundar Rajan

JUDGMENT

This appeal has been filed challenging the fair and decretal
order dated 31.1.2023 passed in I.A.No.3 of 2021 in O.S.No.516 of



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2014 on the file of the Fourth Additional District Court, Coimbatore.

The said application was filed under Order IX Rule 9 of the Civil Procedure Code (for short, the Code) to set aside the order of dismissal of the suit for default dated 04.12.2021.

2. Heard the learned counsel for the appellants and the respective learned counsel appearing for both respondents 1 and 2 as well as the third respondent - bank.

3. This is a classic case of complete misuse of civil proceedings to deprive the third respondent - bank from recovering its dues by bringing the suit property to sale. The appellants, who are the plaintiffs, filed the said suit in the year 2014 against (i) respondents 1 and 2, who are none other than the shareholders in the suit property; and (ii) the third respondent - bank, who was shown as the third defendant and the appellants/plaintiffs had sought for a decree for partition and for allotment of two equal shares in the suit property.

4. Earlier, the said suit was dismissed for default on 08.1.2018. Thereafter, an application came to be filed by the appellants/plaintiffs seeking to set aside the order of dismissal of the said suit and it was



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allowed. Once again, the said suit was dismissed for default on 04.12.2021. Further, the present application came to be allowed by an order dated 20.4.2022 by directing the appellants/plaintiffs to pay costs of Rs.5,000/- to the respondents. However, the appellants/plaintiffs did not pay the costs and therefore, by the impugned order dated 31.1.2023, I.A.No.3 of 2021 was dismissed by the Court below and the original order dismissing the said suit for default was restored on the ground that the condition imposed in the earlier order dated 20.4.2022 to pay costs was not complied and hence, the present application filed under Order XLI Rule 9 of the Code was not maintainable. Aggrieved by the order dated 31.1.2023, the above appeal has been filed before this Court.

5. The main ground that was taken in the memorandum of grounds of appeal is that the Court below did not specifically state as to whom the costs must be paid and that therefore, the costs could not be paid by the appellants/plaintiffs. The appellants have also expressed their willingness to pay the costs.

6. In the considered view of this Court, the said suit itself has been orchestrated only to defeat the rights of the third respondent - bank. The said suit was kept pending and was left to be dismissed for



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default at least on a couple of occasions. This attitude on the part of the appellants/plaintiffs would clearly show that they want the suit to be pending, so that the third respondent - bank can be stopped from proceeding further in accordance with law. It is also brought to the notice of this Court that the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have also been initiated by the third respondent - bank.

7. This Court does not find any merits in this appeal and the impugned order passed by the Court below does not warrant the interference of this Court.

8. In the result, the above civil miscellaneous appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

06.6.2024

To
The Fourth Additional District Court,
Coimbatore.

RS



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N.ANAND VENKATESH,J

RS

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