



A.Nos.5293, 5294 & 5295 of 2024
in
C.S.No.604 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.12.2024

Pronounced on :13.12.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.Nos.5293, 5294 & 5295 of 2024
in
C.S.No.604 of 2019

A.Albert Rajkumar

.. Applicant/Defendant
(in all applications)

/versus/

1.Mrs.A.Beula Rajkumari,
W/o Mr.S.Sudhakar,
No.893, J Block, 18th Street,
Vaigai Colony, Anna Nagar,
Chennai 600 040.

2.Mrs.A.Flora Needhidass,
W/o Williams Needhidass,
Permanently Residing at 94B,
Boulevard, Enwood Park,
New Jersey 07407,
Having temporary residence at
No.F2, Y-Block, 1st Street

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Anna Nagar, Chennai 600 040
Represented by her Power of Agent
A.Beula Rajkumari,
W/o.Mrs.S.Sudhakar,
No.893, J-Block, 18th Street,
Vaigai Colony, Anna Nagar, Chennai 600 040. ...Respondents/plaintiffs
(in all applications)

A.No.5293 of 2024: Application has been filed under Order XIV Rule, 8 of O.S. Rules and Order 9 Rule 9 read with 151 C.P.C., praying to set aside the dismissal order passed in O.A.No.5814 of 2022 in C.S.No.604 of 2019 on 26.09.2024 and restore the same.

A.No.5294 of 2024: Application has been filed under Order XIV Rule, 8 of O.S. Rules and Order 9 Rule 9 read with 151 C.P.C., praying to set aside the dismissal order passed in O.A.No.5815 of 2022 in C.S.No.604 of 2019 on 26.09.2024 and restore the same.

A.No.5295 of 2024: Application has been filed under Order XIV Rule, 10 of O.S. Rules r/w Section 151 of C.P.C praying to condone the delay of 35 days in representing the implead petition SR.No.30282 of 2024 filed in C.S.No.604 of 2019 on the file of this Hon'ble Court.



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For Applicant :Mr.R.Perumal Samy(in all applications)

For Respondents :Mr.R.Nanda Kumar(in all applications)

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COMMON ORDER

The applicant herein is the sole defendant in C.S.No.604 of 2019 filed for partition and separate possession by the two sisters of the applicant.

2. The applicant/defendant entered appearance in the suit and filed counter in O.A.No.933 of 2019. After hearing the parties, this Court *vide* order dated 19.12.2019 disposed the application for interim injunction restraining both the applicants and the respondent from directly or indirectly alienate, encumber or otherwise dispose the suit schedule property pending disposal of the suit. Thereafter, the applicant filed O.A.No.104 of 2020 conceding to the partition of 'A', 'B' and 'D' schedule property and alleging interference of the respondents/plaintiffs in operation of the lift in 'C' schedule property. This application was hotly contested by the parties. This



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Court taking note of the fact that the applicant and the respondents are in control of three flats each in the 'C' schedule building, ordered that they should bear the cost of maintenance of the lift equally and get the license for operating the lift on joint application and ensure neither of the parties disturb the operation of the lift. The application No:104 of 2020 was disposed on the above line on 06.03.2020.

3. Meanwhile, the written statement filed by the applicant/defendant returned due to defects. The written statement was not properly re-presented curing the defects, hence the defendant was set exparte on 22.04.2022. The applicant filed Application No:4158 of 2022 to set aside the exparte order dated 22.04.2022 and the same was allowed by this Court on 14.11.2022 recording the statement made by the applicant that he had filed written statement after serving copy to the plaintiff.



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4. The applicant at the same time also filed A.No.6158 of 2024 to reject the plaint in C.S.No.604 of 2019 on the ground that the suit for partition is not maintainable, in view of the settlement deed executed by his mother in favour of his father is null and void, since it does not contain the details about the extent of undivided share of land and build up area with common area.

5. The fact available from the records shows that, there was delay in filing the written statement and necessary Court fees, hence, the applicant has taken out Application No.5814 of 2022 to condone the delay of 41 days in paying the Court fees of Rs.2,85,505/- and Application No:5815 of 2022 to condone the delay of 63 days in representing the written statement. These two applications were dismissed by the learned Master on 26.09.2024 for default.



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6. Against the dismissal of the said two applications by the Learned Master, the applicant/defendant has filed Applications No:5293 of 2024 and Applications No:5294 of 2024.

7. The applicant had filed an application to implead one Kalaivani, an occupant of the portion in 'C' schedule property and the said application was returned for defect. In representing the Application D.No:30282 of 2024, there is a delay of 35 days. Hence, to condone the delay of 35 days in representing the application to implead a third party, the Application No.5295 of 2024 is filed.

8. The respondents/plaintiffs have filed counter in the condone delay application stating that the reason for delay is vague and not properly explained. The partition suit was instituted in the year 2019 and been contested. The defendant wantonly omitted to file the written statement with



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required Court fees and allowed the Court to pass exparte order. Later ,filed defective written statement and mislead the Court and got the exparte order set aside.

9. In his application to set aside the order of the Master dated 26.09.2024, the applicant states that he went to Coimbatore to file a defamation suit, hence, not able to attend the Court. This explanation *per se* indicates that the applicant is not really interested in pursuing the partition suit and it was not his priority. The case been listed before the Master on various dates, after this Court set aside the exparte order on 14.11.2022. The applicant had been repeatedly representing before the Learned Master that his application for condone delay in filing written statement is pending in Registry and for nearly two years taking adjournments. Particularly on 14.06.2024 when the matter was called before Learned Master, the applicant counsel had represented that he had consented for change of counsel. Thereafter, when the case was listed for hearing on 09.09.2024, there was no

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representation on behalf of the applicant. Hence, recording his absence, the Learned Master has adjourned the case to 26.09.2024, on that day also consequentially there was no representation for the applicant. Under the said circumstances, the Learned Master recording the absence consequentially for two hearings, had dismissed the applications for non prosecution.

10. This Court finds that the proceedings noted above clearly disproves the contention that his absence on 26.09.2024 was inevitable. The Applications No:5293 of 2024 and Application No:5294 of 2024 being meritless, are dismissed. No costs.

11. In so far as the application No:5295 of 2024, to condone the delay in representing the implead petition, this Court finds that the reason stated for delay is equally unacceptable and deserves to be rejected. Accordingly, Application No:5295 of 2024 stands dismissed. No costs.



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Index:yes/no
Speaking order/non speaking order
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DR.G.JAYACHANDRAN,J.

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delivery Common Order made in
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