



C.M.A(MD)No.696 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE G. ILANGO VAN

C.M.A(MD)No.696 of 2023

1.M.Gurulakshmi

2.Maharajakumar

3.Chermaraj

4.Karthigailakshmi

5.Shanmugapriya

... Appellants / Petitioners / Plaintiffs

Vs

1.K.Dhadi veeran @ Vembu

2.V.Thangaiah

... Respondents / Respondents/ Defendants

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 43 Rule 1(c) read with Section 151 of Civil Procedure Code to set aside the fair and decreetal order dated 24.11.2022 passed in I.A.No.2 of 2022 in O.S.No.39 of 2020 on the file of 1st Additional District Judge, Tirunelveli.



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For Appellant : Mr.S.Ponsenthilkumaran

For Respondents : Mr.T.Selvan

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair and decretal order dated 24.11.2022 passed in I.A.No.2 of 2022 in O.S.No.39 of 2020 on the file of 1st Additional District Judge, Tirunelveli.

2. The facts in brief is that the suit in O.S.No.39 of 2020 was filed by the petitioners herein as plaintiffs seeking the relief of recovery of Rs.27,95,375/- with subsequent interest from the defendants and for costs. The defendants entered appearance at the time of trial and the plaintiffs did not appeared before the trial Court on 25.08.2022. So the suit was dismissed for default. To restore that suit I.A.No.2 of 2022, was filed by the plaintiffs / petitioners herein. That was resisted by the defendants / respondents stating that no proper reason was assigned by the petitioners to show that they were prevented from attending the Court on that date. The case was passed over to the afternoon and even in the afternoon session, the plaintiffs have not appeared. The reason assigned by them is not proper. The appellate Court on



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considering the rival submissions thought it fit to allow the petition on payment of Rs.1000/- to the respondents herein / defendants on or before 30.11.2022. Again the appellants failed to comply the conditions and therefore, the petition was dismissed on 30.11.2022. Against which this Civil Miscellaneous Appeal is preferred.

3. Learned counsel for the appellant would submit that now he is ready to pay the enhanced cost if ordered by this Court. The respondent also agreed to receive the enhanced compensation if order is passed by this Court.

4. Considering the above submission on both sides, a cost of Rs.5,000/- (Rupees Five Thousand only) is fixed by this Court, payable by the appellants to the respondents on 01.08.2024. It was submitted before this Court on 02.08.2024 that the order has been complied. In view of the above said compliance, the dismissal order passed by the trial Court in I.A.No.2 of 2022, is set aside and the suit is ordered to be restored to file and trial Court may proceed the suit in accordance with law and may dispose the same as expeditiously as possible.



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5. With the above said direction, this Civil Miscellaneous Appeal is disposed of. No costs.

02.08.2024

NCC : Yes / No
Index: Yes / No
Internet : Yes / No
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To

- 1.The 1st Additional District Judge, Tirunelveli.
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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G. ILANGO VAN, J.

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