



C.M.A.(MD) No.1616 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1616 of 2024

T.Veluchamy Ravi

... Appellant

VS.

R.Ramamoorthi (Died)
Chellathai (Died)

1.Subburaj,
2.Balaji,
3.Subbulakshmi,
4.Vasantha @ Shanthi.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(t) of C.P.C., against the fair and decretal order, dated 27.06.2024, passed by the Principal Sub Judge, Srivilliputhur in I.A.No.14 of 2014 in A.S.No.26 of 2000 in O.S.No.200 of 1999 on the file of the Principal District Munsif Court, Srivilliputhur.



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For appellant : Mr.T.Leninkumar
For Respondent : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is preferred by the appellant/plaintiff against the fair and decreetal order passed in I.A.No.14 of 2014 in A.S.No.26 of 2000 dated 27.06.2024 on the file of the Principal Sub Court, Srivilliputhur.

2. The application Order XLI Rule 19 and Section 151 of C.P.C was taken out by the appellant/plaintiff in order to restore the appeal, which was dismissed on 07.07.2006.

3. The case of the petitioner/appellant is that:

He filed an application in I.A.No.10 of 2003 to send for thumb impression register from the Sub Registrar Office, Virudhunagar and it was dismissed, against which a revision was filed before this Court in C.R.P.No.618 of 2004 and an order of stay of appeal proceedings was granted by this Court. The appeal was posted on 07.07.2006 in order to produce a copy of the order of stay. When



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the petitioner handed over the copy of the order of stay to his counsel, it was informed to him that the appeal was dismissed for non-appearance of the petitioner and prayed to restore the appeal by setting aside the order of the dismissal.

4. The said details were completely denied by the respondent 3 to 6 and it was contended that the petitioner has purposely left the appeal for dismissal on 07.07.2006 in order to delay the appeal proceedings. He had also delayed the numbering of the appeal. It was only taken on file on 20.01.2014. Meanwhile, the first respondent died on 03.01.2002 and sought for dismissal.

5. Heard learned counsel for the appellant and the respondents and perused relevant records.

6. On a careful perusal of the affidavit filed by the petitioner/appellant, no reasons have been properly assigned as to why he did not get along with the appeal.

7. The appeal in A.S.No.26 of 2000 was dismissed for non-



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prosecution by the First Appellate Court on 07.07.2006, since the appellant did not file the copy of the stay order passed in C.R.P.No. 618 of 2004 and for non-appearance of the appellant. When the petition to restore the appeal was filed on 21.07.2006, it was returned by the First Appellate Court on 21.09.2006. Thereafter, the petition for restoration of appeal was re-presented only on 16.12.2013 after a period of seven years. Thereafter, the said application was returned on 20.12.2013 with a direction to give the details of C.R.P.No.618 of 2004, which was pending before this Court. The restoration petition was re-presented on 20.01.2014 with a memo stating that C.R.P.No.618 of 2004 was dismissed on 25.06.2007 and he filed a petition to restore the above Revision Petition before this Court.

8. Therefore, it is deducible that on 25.06.2007 itself, the above said Revision Petition was dismissed for non-prosecution. This restoration petition was taken on file on 22.01.2014. Thereafter, as the petitioner did not take any steps to file the amended copy of the petition, the petition was dismissed for default on 10.09.2018 and thereafter, it was restored on file on 01.07.2019,



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as per the order passed in I.A.No.96 of 2018.

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9. Therefore, it is pellucid that the appellant/petitioner did not pursue the matter diligently and he was adopting delaying tactics in the Court proceedings. Before the First Appellate Court, the appellant was getting time that he has preferred C.R.P. before this Court and on 25.06.2007 itself, C.R.P.No.618 of 2004 was dismissed for non-prosecution. But, after the seven years only the petition for restoration was re-presented on 16.12.2013 without any candid reasons.

10. On a careful perusal of the affidavit enclosed with the petition as mentioned supra, he has not assigned any acceptable reason for his non-appearance before the First Appellate Court. He did not show not even minimum interest to proceed with the appeal diligently and he did not give acceptable reason for non-appearance. That apart, he has protracted the proceedings by filing petition for restoration on 21.09.2006 and he re-presented the same only on 16.12.2013, which shows that he has taken it very slightly. Therefore, in the said circumstances, the appellant was



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granted an order of dismissal. I find no good reason to interfere with the orders of the First Appellate Court and the impugned order does not suffer from any perversity or infirmity.

11. Based on the afore stated discussions and observations, this Civil Miscellaneous Appeal stands dismissed by confirming the order of the First Appellate Court. No costs.

29.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

- 1.The Principal Sub Judge, Srivilliputhur.
- 2.The Principal District Munsif Court, Srivilliputhur.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

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