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CMA No. 1507 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1507 of 2023

1. C.Ravishankar
S/o. Late Chinnapayan @
Chinnathambi, Res. at Agrahara
Nattamangalam Village, Valapadi Tk,
Salem District. Now residing at
No.1456, Clermont Street, Denver, CO-
802220, U.S.A. Rep. by Power of
Attorney Agent Selvambal, W/o.
Selvam, Res. at No.58, Agrahara
Nattamangalam Village, Valapadi Tk,
Salem District.

Appellant(s)

Vs

1. S.Venkatachalam
S/o. Subbu Gounder, Res. at No.4/337,
Kamarajar Nagar, Kariyaperumal
Karadu North Side, Nethimedu, Salem-
636 002.

Respondent(s)



PRAYER

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 & © of CPC, prays to set aside the order dated 06.01.2022 in IA No.1 of 2021 in OS No.230 of 2016 passed on the file of the III Additional District Judge, Salem and to restore the suit, which was dismissed for default on 11.03.2021.

For Appellant(s): V. Sekar

For Respondent(s): No Appearance

JUDGEMENT

The appellant has filed this appeal, to set aside the order dated 06.01.2022 in IA No.1 of 2021 in OS No.230 of 2016 passed on the file of the III Additional District Judge, Salem and to restore the suit, which was dismissed for default on 11.03.2021.

2. The impugned order passed by the Trial Court in I.A. No. 1 of 2021 in O.S.No.230 of 2016 is under challenge. Originally, acting as the power of attorney for the plaintiff, he filed a suit before the Trial Court for recovery of money. When the suit was posted for trial on 11.03.2021, he filed two applications seeking removal of the suit from the list, stating that he was suffering from illness and that the original principal was also unable to appear. Since he was in the U.S.A. during the COVID-19 pandemic, the circumstances



were beyond his control. However, without considering these facts, the learned

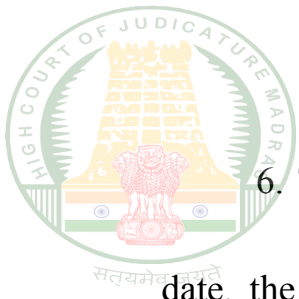
Trial Judge dismissed the suit on 11.03.2021. Thereafter, within 30 days, he

filed an application to restore the suit.

3. The said application was opposed by the defendant, who contended that the petitioner had approached the Court with a false claim and had deliberately allowed the suit to be dismissed for default. Based on these objections, the defendant sought dismissal of the restoration application.

4. After considering the submissions, the learned Trial Judge held that the suit had been filed in the year 2016 and had been listed several times, but the petitioner had not cooperated. Consequently, the application for restoration was dismissed. Aggrieved by the said findings, the present Civil Miscellaneous Appeal has been filed.

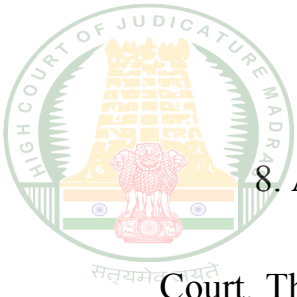
5. Notice was served, but there was no representation on behalf of the respondent.



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6. The learned counsel for the appellant submitted that, on the relevant date, the petitioner/appellant had sought adjournment due to illness, coupled with the difficulties arising from the COVID-19 pandemic. However, the learned Trial Judge, without appreciating these circumstances, dismissed the suit. The same explanation was also placed before the Court in the restoration application, which too was not properly considered. Hence, it is prayed that the impugned order be set aside.

7. On perusal of the records, it is seen that the suit was dismissed for default on 11.03.2021. Admittedly, this was during the COVID-19 period. The facts reveal that the appellant / petitioner was residing in the U.S.A. at the relevant time, and the power agent had submitted before the Court that the petitioner could not appear and that he himself was suffering from illness. Thus, valid reasons were placed before the Trial Court, but they were not taken into account. As rightly pointed out by the learned counsel for the appellant, if an opportunity is not given, his valuable right to prosecute the case will be defeated.



8. Accordingly, this Court is inclined to set aside the findings of the Trial

Court. The Civil Miscellaneous Appeal is allowed. Consequently, the IA No.1

of 2021 in OS No.230 of 2016, passed by the learned III Additional District

Judge, Salem, is also allowed. The appellant is directed to cooperate in the trial

proceedings. There shall be no order as to costs.

20-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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1. The III Additional District Judge,
Salem.
2. The Section Officer,
VR Section, High Court of Madras.



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CMA No. 1507 of 2023



T.V.THAMILSELVI J.
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