

A.No.144 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.No.144 of 2025 in

C.S.No.166 of 2007

Hotel Saravana Bhavan
Rep. by its Partner R.Saravanan,
19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026.

Applicant

Vs

1. The Special Commissioner/
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
2. The District Collector,
Chennai District, Chennai 600 001
3. The District Revenue Officer,
Chennai.
4. The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai.
5. S.Sathyannarayanan

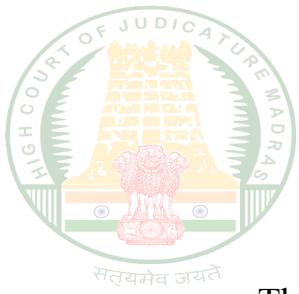
Respondents

For Applicant:

Mr.Srinath Sridevan (SC) for
Mr.A.K.Karthik Lakshmanan

For Respondents:

Mr.R.Ramanlal
Additional Advocate General
Assisted by
Dr.S.Suriya,
Additional Government Pleader



A.No.144 of 2025

ORDER

The application has been filed under Section 151 of C.P.C., seeking to restore the suit in C.S.No.166 of 2007 which was dismissed as withdrawn by the Judgment, dated 28.03.2018.

2. The suit in C.S.No.166 of 2007 had been filed by the applicant seeking declaration of title with respect to the suit property and for permanent injunction restraining the defendants from either interfering with peaceful possession or from transferring or assigning the suit property or in any manner dealing with the suit property and for costs of the suit.

3. The plaintiff is a partnership firm. The plaint had been verified by the Managing Partner of the plaintiff firm. The defendants had entered appearance and also filed written statement. Issues had also been framed. The parties were directed to tender evidence. Accordingly, the plaintiff had also grazed the witness box and had also marked documents. At that stage, the learned counsel on record for the plaintiff had made the following endorsement:

“The suit is withdrawn and may be dismissed as withdrawn”

4. Consequent to the said endorsement made, a learned Single Judge



A.No.144 of 2025

of this Court by judgment dated 28.03.2018, had pronounced as follows:

WEB COPY

“Mr.Sriram, learned counsel appearing for the plaintiff seeks to withdraw the suit and he has also made an endorsement to that effect.

2. In view of the same, the suit is dismissed as withdrawn. No costs.”

5. It is also noted that P.W.1 had been examined on behalf of the plaintiff and Exs.P1 to P35 have also been marked.

6. Two pertinent issues will have to be noted:

- i. Neither the plaintiff nor any of the partners of the plaintiff firm / more specifically the Managing partner of the plaintiff firm who had verified the plaint, had made a similar endorsement in the plaint nor had counter signed the endorsement made by the learned counsel;
- ii. The plaintiff had not filed any application seeking abandoning of any part of cause of action or the entire cause of action or seeking permission to withdraw the suit with liberty to file a separate suit on the same cause of action.

7. It is thus seen that an endorsement simplicitor had been made by the learned counsel for the plaintiff. Thereafter, more than five years later,



A.No.144 of 2025

the present application has been filed seeking to restore the suit. In the affidavit filed in support of the Judges Summons, it had been stated that the suit had been withdrawn only on the assurance and bonafide belief that only if the suit is withdrawn, the respondents would consider grant of patta for the land. It had been stated that even the power or attorney agent of the plaintiff had made a similar statement to the plaintiff and had convinced the plaintiff that it would be in the interest of the plaintiff, if the suit is withdrawn. Accordingly, the learned counsel had made the aforementioned endorsement, consequent to which, the learned Single Judge had pronounced Judgement, dismissing the suit as withdrawn. It is also noted that withdrawal of the suit was not on the basis of any settlement made or on any memo of compromise produced or on any of the written material produced before the Court giving reasons for the said withdrawal. No reasons were advanced, no reasons were sought and no reasons had been given.

8. Even before filing of this application, since there had been a delay of more than five years, the applicant had filed application in A.No.3721



A.No.144 of 2025

of 2024 seeking to condone the delay of 2098 days in filing this application to restore the suit.

9. I must make a mention about the orders passed in that particular application since in the course of his arguments, the learned Additional Advocate General had placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***(1987) 1 SCC 5, Sarguja Transport Services Vs. State of Transport Appellate Tribunal, M.P.Gwalior and ors.*** wherein the Hon'ble Supreme Court had examined the principles underlying Rule 1 of Order XXIII of C.P.C., and examined a situation wherein the plaintiff who had instituted a suit in Court and availed a remedy and thereafter sought permission to institute a fresh suit in respect of the same subject matter after abandoning the earlier suit or by withdrawing it without the permission of the Court to file a fresh petition. While examining that particular issue, the Hon'ble Supreme Court had an occasion to examine whether a plaintiff who withdraws the suit could once again institute a fresh suit on the same cause of action and held on a plain reading of Order XXIII Rule (1) of C.P.C., that a fresh suit cannot be instituted unless the Court had specifically granted permission.



A.No.144 of 2025

WEB COPY

10. The learned Additional Advocate General would further argue that this principle would also apply to an extent to restoration of the suit which would have the same effect of bringing back on file the suit on the same cause of action.

11. There can however be no doubt in the mind that two separate situations had arisen. One is restoring a suit which had been withdrawn simplicitor and permitting the plaintiff to continue with the suit as it had already been taken on file by the Court and the other is abandoning the cause of action and without seeking leave of the Court, instituting a fresh suit on the same cause of action which is impermissible. Therefore reliance placed on by the learned Additional Advocate General in that aforementioned principle would not directly come to the assistance of the respondents in this case.

12. The learned Additional Advocate General had also placed reliance on yet another Judgment of Division Bench of the Chhattisgarh



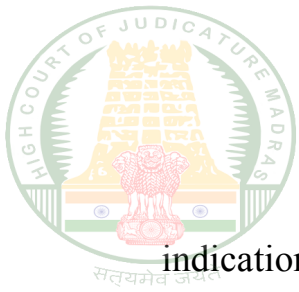
A.No.144 of 2025

High Court reported in *AIR 2007 Chh 114, Control Electronics India Vs.*

State of Chhattisgarh & Ors. I must make specific reference to this particular Judgment since the Division Bench had further examined about the suppression of parallel proceedings and thereafter, coming back to Court. The Division Bench of Chhattisgarh High Court had come down on the practice of what it called “Bench hunting”. The reliance placed by the learned Additional Advocate General on the principles laid therein requires clarification.

13. Application No.3721 of 2024 came up for consideration before a learned Single Judge of this Court (*Abdul Quddhose,J*) and the learned Judge had condoned the delay of 2098 days in filing the application to restore the suit. The respondents had raised contentions about maintainability. The learned Single Judge had not examined the issue of propriety of filing an application to restore a suit which has been withdrawn but had stated that the said issue can be examined in the application to restore the suit.

14. This application has now been listed before me as per the portfolio assigned by the Hon'ble Chief Justice. Therefore any slight



A.No.144 of 2025

indication by the learned Additional Advocate General of “Bench Hunting” cannot be countenanced by this Court.

15. The third Judgment which had been relied on by the learned Additional Advocate General is the one reported in *AIR 1968 SC 111* in *Hulas Rai Baij Nath Vs. Firm K.B.Bass and Co.* wherein the Hon'ble Supreme Court had examined the scope of Order XXIII Rule 1 of C.P.C., and held on examining Rule 2 that an application has to be filed and permission/leave must be sought for from the Court to institute a fresh suit on the same cause of action. It is contended by the learned Additional Advocate General that an application is not required under Sub Rule (1). That contention may be right. The learned counsel on record for the plaintiff had made an endorsement and the learned Single Judge had permitted withdrawal of the suit and pronounced Judgment dismissing the suit as withdrawn.

16. The issue now is whether such withdrawal would prevent the plaintiff seeking restoration of the suit. The learned Senior Counsel for the



A.No.144 of 2025

applicant placed reliance of a Judgment of the Madras High Court reported in ***AIR 1923 Mad 246, Lakshmana Pillai Vs. Appalwar Alwar Ayyangar***, wherein a learned Single Judge of this Court had opined that there could be no reason why withdrawal of a suit should not be recognized, unless it causes undue prejudice to any other party to the proceedings.

17. The learned Additional Advocate General had argued that if the suit is restored then the defendants would be put to prejudice. But, that is an issue which can be examined only when the suit is restored.

18. A Division Bench of the Calcutta High Court in a Judgment reported in ***AIR 1986 Cal 19 in Rameswar Sarkar Vs. State of West Bengal and ors.*** had dealt with an issue where the suit was withdrawn on a blunder and thereafter an application had been filed under Section 151 of C.P.C., seeking withdrawal of the suit.

19. In the instant case, an application has not been filed seeking to withdraw the suit. Only an endorsement was made by the learned counsel



A.No.144 of 2025

on the basis of which, a learned Single Judge had pronounced Judgment, dismissing the suit as withdrawn.

20. In any civil suit where a right is sought to be curtailed, it would always be prudent that the view of the litigant is also sought by the Court to find out whether he had given specific instructions to his counsel to make any endorsement to withdraw the suit.

21. Be that as it may, the leaned Senior Counsel appearing for the applicant had placed reliance on a Judgment of the Hon'ble Supreme Court reported in *(2010) 2 SCC 107, Dwarika Prasad Vs. Nirmala and ors.* wherein the respondent therein was held entitled to be substituted in the place of her deceased father in a suit claiming interest in the joint properties. It was held that she was entitled to file an application for restoration of the partition suit which was withdrawn by forging her father's signature. The facts of the case defers drastically since there was an allegation of forgery and the right of the applicant has been deprived in that particular case.

22 In the instant case, the counsel had made an endorsement withdrawing the suit and the same plaintiff had come back to Court



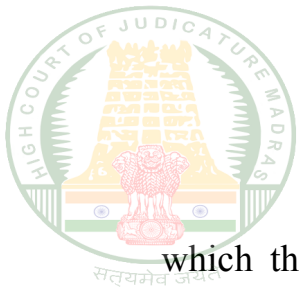
A.No.144 of 2025

seeking restoration of the suit.

WEB COPY

23. The learned Senior Counsel for the applicant also placed reliance on the Judgment of the Hon'ble Supreme Court reported in **(2006) 3 SCC 699** in ***Jet Plywood (P) Ltd. and anr. Vs. Madhukar Nowlakha and ors.*** wherein the Hon'ble Supreme Court examined the scope of Section 151 of C.P.C., and held that the inherent power of the Court can come to the aid to act *ex debito justitiae* for doing real and substantial justice between the parties. In fact, the Hon'ble Supreme Court had observed that the order of the trial Court refusing to allow a recall application does not reflect that the trial Court did not have the power to order recall. It was held that discretion vests with the Court, but the right to examine the application seeking to withdraw the earlier withdrawal of the suit is always inherent in the Court.

24. The Hon'ble Supreme Court had placed reliance on an earlier Judgment reported in ***AIR 1962 SC 527, Manohar Lal Chopra V. Rai Bahadur Rao Raja Seth Hiralal*** wherein the Hon'ble Supreme Court had examined the scope of Section 151 of C.P.C., and the condition under



A.No.144 of 2025

which the Court can refer to Section 151 of C.P.C., and had held that Section 151 C.P.C., would always come in aid of the Court to do justice when there is no specific provision in any enactment. If there is a specific provision, then that provision should be resorted to.

25. In the Original Side of this Court, the vakalat which is filed by a counsel is not attested by a third party. It is an agreement between the counsel and the litigant. It gives a right to the counsel to file a suit. It also provides the right to the counsel to enter into the Court and to advance submissions. Naturally if any endorsement is made by the counsel, it is required that such endorsement is drawn to the notice of the party. It would also be prudent that any endorsement is also countersigned and the counsel identifies the party who signs as a primary signatory. This procedure has to be followed to avoid subsequent issues being raised.

26. I must appreciate the deponent of the affidavit who had exercised much caution on the decision taken by the counsel to withdraw the suit and the circumstances under which an endorsement was made by the counsel, I hold that prejudice would be caused to the plaintiff if the suit



A.No.144 of 2025

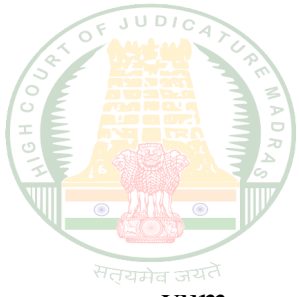
is not restored to file.

WEB COPY

27. The learned Additional Advocate General had advanced arguments on the nature of land and about the necessity for the Government to deal with the land. The learned Additional Advocate General stated that there are Writ Petitions and Writ Appeals pending. But as is always the case, litigations are filed in various Courts and it is for the parties to address them and argue on merits before the Courts.

28. I would allow the application and restore the suit to file. But, since issues have been framed and P.W.1 had grazed the witness box and had also tendered evidence, the learned Senior Counsel for the plaintiff and the learned Additional Advocate General appearing for the respondents shall advance arguments on the maintainability of the suit as framed.

29. List the matter under the caption for framing additional issues on 30.06.2025.



A.No.144 of 2025

23-06-2025

WEB COPY

To

1. The Special Commissioner/
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
2. The District Collector,
Chennai District, Chennai 600 001
3. The District Revenue Officer,
Chennai.
4. The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai.

C. KARTHIKEYAN,J.

vum



WEB COPY



A.No.144 of 2025

A.No.144 of 2025 in
C.S.No.166 of 2007

23.06.2025