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CMA.No.935 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.935 of 2025 and

S.Kalaizahagan

... Appellant

Vs.

1. D.Haribabu

2. H.Saraswathi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1(c) of CPC to set aside the fair and decretal order passed in I.A.No.2 of 2020 in O.S.No.4125 of 2019 on the file of the XVII Additional Judge, City Civil Court, Chennai

For appellant : Mr.M.Jaikumar

For Respondents : Mr.P.Sankaranarayanan

JUDGMENT

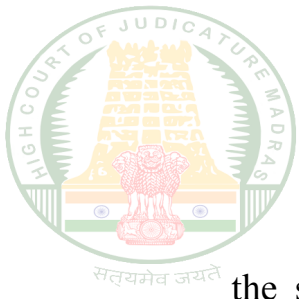
This civil miscellaneous appeal has been filed challenging the order passed by the Trial Court, dismissing the application filed by the appellant/plaintiff under Order IX Rule 9 of CPC seeking restoration of the suit.



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2. It is not disputed that the appellant/plaintiff filed a suit for recovery of vacant possession of the suit property from the respondents/ defendants and it was dismissed for default on 09.03.2020. Thereafter, the appellant/plaintiff filed an application to restore the suit on 16.03.2020, well within the time. In the affidavit filed in support of the above application, it was stated by the appellant/plaintiff that originally suit was filed before the Original side of the High Court and it was numbered as C.S.No.876 of 2016. The respondents/ defendants failed to appear before the Court and hence, they were set exparte. Subsequently, exparte evidence was taken and the plaintiff was examined as PW1 in chief and the matter was posted for argument. At this juncture, due to the raising of pecuniary jurisdiction of original side of the High Court, the matter was transferred to the City Civil Court, Chennai and the same was renumbered as O.S.No.4125 of 2019. The said suit was posted in the special list on 09.03.2020 and inspite of the representation made by the junior advocate of the plaintiff, the matter was passed over. It was further stated in the affidavit that the counsel for the respondents/ defendants made a wrong representation before the court and hence,



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the suit was dismissed for default for the failure of the plaintiff to appear before the court. It is further stated that the failure of the plaintiff was not willful one and the same was due to above mentioned reason.

3. The said application for restoration of suit was opposed by the respondents/defendants by filing counter, wherein, it was stated that after transferring of the case from Madras High Court to the City Civil Court, issues were framed on 11.02.2020 and the matter was posted for Special List on 09.03.2020. It was also stated that on the relevant date, there was no representation on the side of the plaintiff and hence, having no other option, the Trial Court dismissed the suit for default.

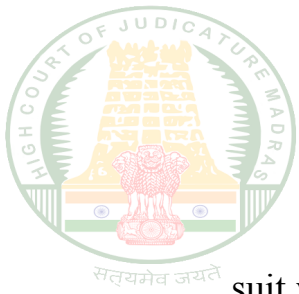
4. A perusal of the impugned order would suggest that the respondents/defendants were set exparte, when the suit was pending before this court in C.S.No.876 of 2016. Thereafter, due to the raising of pecuniary jurisdiction, the said suit was transferred to the City Civil Court, Chennai. After re-numbering of the suit before the City Civil Court, the respondents filed an application in I.A.No.1 of 2019 to set



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aside the exparte order passed against them and the same was allowed on 11.02.2020 and on the very same day, the respondents filed their written statement also. Upon perusing the pleadings, the Trial Court framed issues on 11.02.2020 itself and posted the matter in the Special List on 09.03.2020. Therefore, it is clear that the case was posted in the Special List on 09.03.2020 for chief examination of PW1, only after filing of written statement by the respondents/defendants and framing of issues. Hence, the contention raised by the appellant/plaintiff, as if the suit was posted for cross examination of PW1 cannot be accepted. In any event, the respondents remained exparte before the High Court, when the matter was pending before this court in C.S.876 of 2016 and after transferring the case to the City Civil Court, Chennai, they filed the petition to set aside the exparte order and it was allowed and the suit was posted in the Special List on 09.03.2020. On the very first day, since there was no representation for the plaintiff, the Trial Court dismissed the suit for default. Taking into consideration the conduct of the respondents in allowing the suit to be decreed exparte and also the fact that the suit was transferred to the City Civil Court, Chennai from the Madras High Court and after framing of issues the



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suit was dismissed on the first day, on which date the case was listed in

the Special List, this court is inclined to take liberal view of the matter.

In the facts and circumstances of the case, this court feels that it would

be appropriate to give one more opportunity to the plaintiff to conduct

his case on merits, however on condition of payment of costs.

5. Accordingly, this civil miscellaneous appeal is allowed on payment of Costs of Rs.10,000/- (Rupees then thousand only) by the appellant/plaintiff to the Chief Justice Relief Fund, Madras High Court, **within four weeks from today**. Failing which, this civil miscellaneous appeal shall stand automatically be dismissed. In case of compliance of the above condition by the appellant in time, this civil miscellaneous appeal is allowed by setting aside the impugned fair and decreetal order passed by the Trial Court. The Trial Court is directed to restore the suit and dispose of the same as expeditiously as possible.

23.04.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. The XVII Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section, Madras High Court.
3. The Section Officer,
Account Section,
High Court, Madras.



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S.SOUNTHAR, J.

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