



WEB COPY

CMA No. 1021 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1021 of 2023

1. Nadhiya

W/o. Vijayakumar, Paarivettai Street,
Thirunagari, Sirukazhi Taluk,
Mayiladuthurai District.

2. Nagalakshmi

W/o. Kalimuthu, Paarivettai Street,
Thirunagari, Sirukazhi Taluk,
Mayiladuthurai District.

3. Minor. Vishva

S/o. Vijayakumar, (Minor rep by
guardian Nadhiya) Paarivettai Street,
Thirunagari, Sirukazhi Taluk,
Mayiladuthurai District.

4. Minor. Vishnupriyan

S/o. Vijayakumar, (Minor rep by
guardian Nadhiya) Paarivettai Street,
Thirunagari, Sirukazhi Taluk,
Mayiladuthurai District.

Appellant(s)



Vs

1. Manikandan

S/o. Thangachetty, No. 229, Tsunami
Nagar, Kilinchalmedu, Karaikal - 609
605, Puducherry.

2. United India Insurance Company Ltd

123A, Taj Towers, No.2, Road,
Mayiladuthurai Town.

3. Rekha

W/o. Jayaragavan, No. 29, Metli 2nd
Street, Thiyagaraya Nagar, Chennai -
600 017.

Respondent(s)

PRAYER :- Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Civil Procedure Code, praying to set aside the order dated 03.01.2023 passed in IA No.2 of 2022, in MCOP No.48/2021 on the file of the Additional District Court, Mayiladuthurai

For Appellant(s): Mr. D.Ashokkumar

For Respondent(s): R1 And R2 - No Appearance
R3 - No Such Person

JUDGMENT

Challenging the impugned order dated 03.01.2023 passed in I.A.No.2 of 2022 in MCOP No. 48 of 2021, the petitioners have preferred this Civil Miscellaneous Appeal.

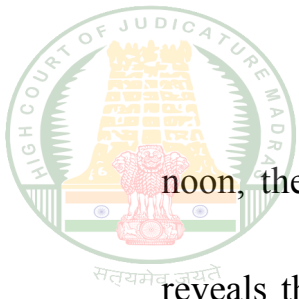


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2. Before the Tribunal, the petitioners have filed an application in I.A.No.2 of 2022 seeking to restore the M.C.O.P., which was dismissed for default. Originally, when the main case was posted for enquiry, due to absence of petitioners, the MCOP was dismissed for default and to restore the same, the petitioners have filed the application. As per the records, when it was taken for enquiry on 03.01.2023 due to absence of petitioners, again the tribunal had dismissed the said application. Challenging the said order, the petitioners have preferred this Civil Miscellaneous Appeal.

3. The learned counsel for appellants would argue that without giving due opportunity, the Tribunal has mechanically and erroneously dismissed the said application.

4. On perusal of records, in the year 2021, the petitioners have filed a claim petition. Due to lack of communication as well as due to illness, on 18.11.2022 when the case was posted for hearing, they were not able to attend the hearing. Accordingly, the Tribunal has dismissed the petition for default and to restore the same, they have filed an application in I.A.No. 2 of 2022. When it was posted for hearing on 03.01.2023, due to absence of petitioners at 12.00



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noon, the said application was dismissed again by the Tribunal. But, the fact reveals that the parties are legal heirs of deceased and the 1st petitioner is the widow wife, 2nd petitioner is mother of deceased aged about 75 years and 3rd and 4th petitioners are minor daughters of deceased. Hence, on considering the nature of parties, the Tribunal ought to have given one more opportunity, but instead of that, the Tribunal dismissed the said application as such is erroneous one. Therefore, the order passed by the tribunal in I.A.No. 2 of 2022 in MCOP.No. 48 of 2021 is set aside. The Tribunal is directed to take the application on file and to proceed with the case by giving due opportunity to both parties and to dispose the same within a period of six weeks from the date of receipt of copy of this judgment. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.

10-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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1. Additional District Judge, Mayiladuthurai.
2. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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