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A.Nos.3292 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 20.08.2025	PRONOUNCED ON 26.08.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.Nos.3292 & 3886 of 2025

in

C.S.No.202 of 2022

A.Sharafudeeen (Deceased)

1.M/s.Hotel Oriental Towers,
Rep., by its Managing Director,
Mr.Ahamed Azad,
No.2889, Srinivasan Pillai Road,
Pudupattinamvattam,
Thanjavur – 613 001.

2.Fareetha Begum

3.Jawahar Banu

4.Ahamed Azad

... Applicants 1 to 4/Defendants 2 to 5
in both Applications
vs.

1.P.A.Abdul Jaleel

2.Jamal Mohiadeen

... Respondents 1 &2 /Plaintiffs
in both Applications



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For Applicant : Mr.V.K.Vijayaragavan

For Respondent : Mr.Avinash Wadhwani for
Ms.V.Srimathi for RR1 & R2

COMMON ORDER

The Application in A.No.3292 of 2025 had been filed to condone the delay of 457 days in setting aside the exparte decree passed against defendants in C.S.No.202 of 2022, dated 05.12.2023.

2.The Application in A.No.3886 of 2025 had been filed to stay of all further proceedings in E.P.No.12 of 2025 in C.+20S.No.202 of 2022 on the file of the learned Master pending disposal of A.No.3292 of 2025 to condone the delay in setting aside exparte decree and judgment passed in C.S.No.202 of 2022, dated 05.12.2023.

3. Heard Mr.V.K.Vijayaragan, learned counsel appearing for the applicants and Mr.Avinash Wadhwani, learned counsel appearing for the respondents 1 & 2.

4. The learned counsel appearing for the applicant would submit that the



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respondents had originally filed a Suit as against the first applicant and the husband of the second applicant and the father of applicants 3 & 4 one Late A.Sharafudeeen. Originally the Suit was instituted before the District Court Thanjavur wherein the application was taken for rejection of plaint and the plaint was rejected holding that the said Court did not have jurisdiction and the same was challenged by the respondents and affirmed by the Madurai Bench of this Court. Thereafter, the plaint was returned and had been represented before this Court in the year 2022. In the interregnum, the first defendant in the Suit had died of whom the applicants 2 to 4 are the legal heirs. The applicants 2 to 4 have become a permanent resident of Singapore and have been permanently residing there and would travel often according to their necessity to India. The respondents have taken out an application to bring on record the legal heirs of the first defendant in which no notice had been served on the applicants. Further there was no Suit summons served on the applicants in the instant Suit, however recording that the applicants have refused to receive the private summons attempted to be served upon them, they were set *exparte* and an *exparte* decree came to be passed. He would further submit that the Suit summons attempted to be served by the Court had been returned by an endorsements by the Bailiff that they were settled out of India along with



the certificate given by the President of the Panchayat.

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5. When that being so, it is not known as to how the Postal Department had returned the covers with the endorsement “refused”. That apart, immediately on knowing about the ex-parte decree which had come to the knowledge of the fourth applicant, when he had come to India for a visit, the present application had been taken out. In these circumstances there had occasioned a delay of 457 days in filing the application which is neither willful or wanton and therefore, he seeks to condone the delay in filing the application to set aside the ex-parte decree.

6. The said contentions were vehemently contested by Mr. Avinash Wadhwani, learned counsel appearing for the first and second respondent. Placing reliance upon an application made by the second applicant for grant of legal heir certificate, he would submit that they had shown the very same address on which the summons had been attempted to be served. He would further submit that even though, they have pleaded in their affidavit that the passport would be a sufficient evidence to show that at the time of attempted service of summons they were not in India, they had not produced the copy of



the said passport. He would further submit that the application as filed by the applicants are not maintainable in respect of the first applicant as the first applicant had been duly served with the summons and represented by the first defendant in the suit. Even according to the affidavit filed, the fourth applicant is now the Managing Director of the first applicant. The first applicant having knowledge of the proceedings, even at the initial stage, when the issue was pending before the District Court, Thanjavur, it cannot claim ignorance of the suit. What was ordered by this Court was only impleading of the applicants 2 to 4 alone and fresh summons were attempted only on the applicants 2 to 4 and not on the first applicant. Therefore, he would submit that the first applicant as well as the fourth applicant who is the Managing Director of the first applicant cannot be said to have no knowledge of the suit. Similarly, the applicants 2 & 3 being the mother and sister of the fourth applicant also cannot claim ignorance of the suit. They are now attempting to set aside the *ex-parte* order and to reopen the suit that was filed as early as in the year 2017 for recovery of money as against the deceased first defendant and first applicant herein which is only to delay the proceedings and nothing else. He would further submit that they have not come with clean hands as they themselves have not produced the passports even though, they have averred that the passport would substantiate



their claim.

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7. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. The instant suit was initiated by the respondents as against the husband of the second applicant and the father of the applicants 3 & 4 and the first applicant as early as in the year 2017. The suit summons were served on the original defendants and they had also taken out an application under Order VII Rule 11 to reject the plaint. The said application came to be allowed and the same was challenged by the respondent before the Madurai Bench of this Court which had affirmed the order of rejection. The said returned plaint was represented before this Court during which time the first defendant had died and who is now being represented by the applicants 2 to 4. After the death of the first defendant, an application to bring on record his legal heirs namely applicants 2 to 4 had been taken out and this Court having found that they have been served with proper notice in the same, had directed bringing on record the legal heirs of the deceased first defendant and issue summons through both Court and privately. The Court summons on the applicants 2 to 4



had been returned with an endorsement as having left India along with the certificate issued by the President of the Panchayat in support of the return.

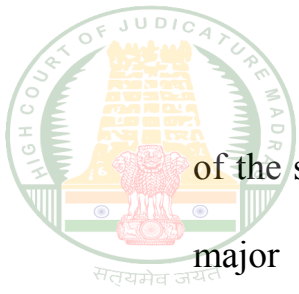
However, the private notice had been returned with an endorsement as “refused” by applicants 2 to 4.

9. Even though, the applicants had pleaded in their affidavit in support of the application that the entries in the passport would substantiate their claim that they had not produced the said passport which has been pointed out by the learned counsel appearing for the respondent. Hence, this Court had directed the applicants to produce the copy of the passport by circulation. The copy of the passport of the second applicant alone had been produced. A perusal of the entries made in the same would indicate that at that relevant point of time, the second applicant had arrived in India on 05.11.2023 which is evidenced from the seal of the Immigration Authorities at Tiruchirappalli Airport and she had left India and there is also a seal of departure from Tiruchirappalli Airport on 28.11.2023. It would mean that the second applicant was available in India from 05.11.2023 till 28.11.2023. The Court summons were attempted to be served on 16.11.2023, as seen from the endorsement made by the Bailiff and



affirmed by the Central Nazir, District Court, Tiruvarur, which was supported by a certificate issued by the President of Ayikkudi Panchayat dated 16.11.2023. On a perusal of the Postal covers filed along with AoS, there is an endorsement of the Postal Department indicating that the covers are refused to be received on 07.11.2023. Hence, at that relevant point of time when the summons were served, the second applicant was present in India. Hence, an averment made in the affidavit filed in support of this application that at that relevant point of time they were away from India is not a true and fair statement.

10. That apart, as rightly pointed out by the learned counsel for the respondent that the first applicant had been served even during the pendency of the suit at the District Court, Thanjavur and had the knowledge of the suit. Even though, the first defendant who was a partner in the first applicant had died, it is an admitted case that the fourth applicant on the death of his father became a major share holder in the first applicant and hence cannot share the umbrella of the applicants 2 to 4 to seek to set aside the ex-parte decree passed against it. The passports of applicants 3 & 4 have not been placed before this Court for it to also come to a conclusion that they had the same reason as that



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of the second applicant. Further, the fourth applicant who is the partner as the major shareholder of the first applicant had not come by way of an independent affidavit to state that even after he taking control of the first applicant, he was aware of the pending suit. It is to be further noted that the second applicant who had sworn the affidavit even on behalf of the first applicant, is not authorised by the first applicant to file the application.

11. For the all the aforesaid reasons, this Court do not find any merits in the application and accordingly, the applications are dismissed. However, there shall be no order as to costs.

26.08.2025

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU.J.,

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Pre-Delivery Order in
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in
C.S.No.202 of 2022

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