



S.A.No.181 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.181 of 2025

Minor Gopal
S/o.Rathina Achari

... Appellant

Vs.

Rajenthiran

... Respondent

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed against the Judgment and Decree dated 07.07.2017 made in A.S.No.47 of 2012 passed by the learned Additional Subordinate Judge, Tindivanam, confirming the judgement and decree dated 19.12.2011 in O.S.No.266 of 2000, passed by the learned Principal District Munsiff, Tindivanam.

For Appellant : Mr.K.Balakrishnan

J U D G M E N T

The appellant has filed this Second Appeal against the Judgment and Decree passed by the II Additional Subordinate Court, Tindivanam made in



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A.S.No.47 of 2012, dated 07.07.2017, which were confirmed by the decree and judgment passed in O.S.No.266 of 2009 on the file of the Principal District Munsif, Tindivanam, dated 19.12.2011.

2. Heard Mr.K.Balakrishnan, learned counsel for the appellant/defendant, and perused the materials available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Apart from the grounds of appeal, the learned counsel for the Appellant brought to the court's attention that before the first appellate court, the learned counsel for the Appellant had reported "no instructions." On the date of hearing, instead of dismissing it for default, the learned first appellate judge proceeded to pronounce judgment on merits, as if the Appellant's counsel had argued the matter, this constitutes a gross violation of the procedure laid down in Order XLI, Rule 17. On that ground he wants to set aside entire findings of the learned First Appellate Judge.



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WEB COPY 5. Upon perusal of the judgment of the first appellate court, it is evident, as rightly pointed out by the learned counsel for the Appellant, that in Paragraph No. 8, the learned judge noted that the counsel engaged by the Appellant/Defendant had made an endorsement of “No instructions.” Paragraph 8 of the first appellate judge’s judgment states as follows:

“8.....While the appeal stood posted for arguments, the counsel who had been engaged by the appellant / defendant has made an endorsement as “No instruction”. So that the appellant was called upon and she had not appeared in person before the Court. Anyhow on the basis of the available evidence and documents a judgment on merit would be deemed justifiable and appropriate.”

6. This observation by the learned judge clearly indicates that the Appellant's counsel had reported "no instructions" on the date of the hearing. However, the presiding officer proceeded to pronounce judgment on merits, as if the Appellant’s counsel had presented arguments. Furthermore, in the front portion of the judgment misleadingly suggests that both counsels had argued the appeal, as it states:



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“ This appeal came up for final hearing on 17.06.2017 in the presence of Thiru.A.Senthamaraikannan counsel for the appellant / defendant, Thiru.A.Jayakumar counsel for the respondent, and upon hearing the arguments on both sides, upon perusing the ground of appeal and having stood over for consideration till this day, this Court delivered the following:”

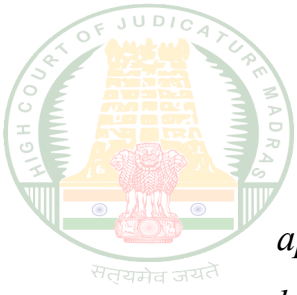
7. When the learned counsel for the Appellant reported "no instructions," the learned judge ought to have dismissed the appeal for default in accordance with the procedure laid down in Order XLI, Rule 17.

Order 41, Rule 17 explicitly states:

"17. Dismissal of appeal for appellant's default:- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

[Explanation-Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits]

(2) Hearing appeal ex-parte:- Where the appellant



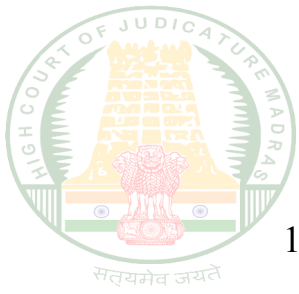
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appears and the respondent does not appear, the appeal shall be heard ex parte."

8. Thus the law is clear, if the Appellant is absent, the court ought to have dismissed the appeal for default, and not have the power to decide the appeal on merits. However, in the present case, the learned first appellate judge proceeded to pronounce judgment on merits, which is entirely erroneous and liable to be set aside.

9. This constitutes a grave procedural violation by the presiding officer. Given that she holds the position of District Judge, it is imperative that she receives proper training at the Judicial Academy to prevent such erroneous orders in the future, as such lapses could lead to a miscarriage of justice.

10. Therefore, this Court is inclined to set aside the findings of the First Appellate Judge and remand the matter to the First Appellate Court for reconsideration. Upon remand, the learned First Appellate Judge is directed to issue fresh notices to both parties and decide the matter in accordance with the prescribed procedures.



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11. Additionally, the Director, Tamil Nadu State Judicial Academy, Chennai, is directed to provide training to Mrs.S.Hermies, BA.M.L., now became District Judge, who passed this judgement in the First Appeal ensuring that such errors in judgement writing are not repeated any further. The Registry is instructed to take necessary steps in this regard. Until the case is taken on file, the decree shall remain stayed.

12. The Registry is further directed to send a copy of this judgment to the Director, Tamil Nadu State Judicial Academy, Chennai. The Director of the Judicial Academy shall ensure that proper training is imparted to Judicial Officers on how to avoid such errors in judgment writing.

13. With the above observations and directions, this Second Appeal is disposed of. There shall be no order as to costs.

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Index : Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No
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1. The Additional Subordinate Judge, Tindivanam.
- 2.The Principal District Munsiff, Tindivanam.
3. The Director, Tamil Nadu State Judicial Academy, Chennai.
4. Mrs.S.Hermies, B.A.M.L., District Judge, Chennai.
- 5.The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMILSELVI, J.

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