



C.M.A(MD)No.257 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2026

Pronounced on : 17.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.257 of 2020

Abdul Razak (died)

1.Asha Samad

2.Akash Jaman

3.Sangeetha

4.Almash Patchani

5.Anwar Piyas

6.Sohani

7.Jenna

8.Ashwin Razak

: Appellants

Vs.

1.C.A.Thalakku

2.Mukesh

: Respondents



C.M.A(MD)No.257 of 2020

WEB COPY

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(C) of C.P.C., against the fair and executable order, dated 22.02.2019 made in I.A.No.410 of 2018 in O.S.No.38 of 2007 on the file of the Additional District and Sessions Judge, Periyakulam.

For Appellants : Mr.R.Suriya Narayanan,

For Respondents : Mr.M.Kannan

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in I.A.No.410 of 2018 in O.S.No.38 of 2007, dated 22.02.2019 on the file of the Additional District and Sessions Judge, Periyakulam.

2.The appellants are the petitioners/plaintiffs 2 to 9 and they along with deceased first plaintiff filed a suit in O.S.No.38 of 2007, seeking refund of advance amount allegedly paid under the sale agreement, dated 31.07.2006 and the endorsement made thereunder. The respondents filed their written statements and contested the suit. After full trial, when the suit was pending for arguments, as there was no representation for the plaintiffs



C.M.A(MD)No.257 of 2020

WEB COPY

and the plaintiffs were called absent, the learned trial Judge, dismissed the suit for default. The plaintiffs, invoking Order 9 Rule 9 of C.P.C., filed the present petition, seeking restoration of the suit, which was dismissed for default on 30.07.2018.

3. The case of the petitioners/plaintiffs canvassed in the restoration petition is that the suit was posted to 30.07.2018 for arguments; that the counsel appearing for the second respondent/second defendant informed that they were going to file a memo before the Court and furnished a copy of the same; that since the counsel was not well on that day, he instructed his junior counsel to seek an adjournment for arguments; that the counsel was under the impression that the Court would have accepted the memo filed by the second defendant, but on 30.07.2018, the trial Court without taking the memo filed by the second respondent, took up the case for arguments; that since the junior counsel went to the Court of the Judicial Magistrate to attend the criminal case, the suit was called and as there was no representation, the same was dismissed for default and that the petitioners will be put to irreparable loss and hardship, if the suit is not restored.



C.M.A(MD)No.257 of 2020

WEB COPY

4. The respondents/defendants filed a counter statement disputing the affidavit averments and further stated that the affidavit filed in support of the restoration petition has been sworn to by the Advocate on record; that though there are eight petitioners/plaintiffs, none of them has come forward to file an affidavit in support of the said petition and the same would indicate that they were not aware of the suit proceedings and they were kept in the dark by the deponent, in an attempt to cover up his own lapses, he has ventured to file the present petition; that the petitioners have projected the present petition as though it is the first petition to restore the suit before the trial Court, but actually the suit had been dismissed by the trial Court on three occasions ie., on 14.03.2016, 29.09.2016 and on 24.04.2017; that the default orders were set aside by the trial Court on 26.08.2016, 05.01.2017 and 22.11.2017 respectfully; that the petitioners have suppressed the above aspects; that the reasons canvassed are all false and invented for filing of the above petition and that the petition which is devoid of merits, is liable to be dismissed.

5. The learned trial Judge, after enquiry, passed the impugned order, dated 22.02.2019, dismissing the restoration petition. Aggrieved by the dismissal order, the petitioners/plaintiffs have filed the present appeal.

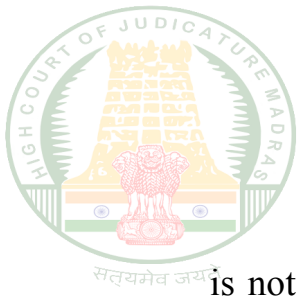


C.M.A(MD)No.257 of 2020

WEB COPY

6. The learned counsel for the petitioners would contend that the Hon'ble Supreme Court has repeatedly held that the expression 'sufficient cause' should receive a liberal approach and technicalities should not be permitted to defeat substantial justice, and that a litigant should not suffer for the fault of their counsel; that the non appearance on 30.07.2018 was neither willful nor wanton, but due to the inadvertence of the counsel; that when substantial evidence had already been adduced, the trial Court ought to have exercised its power under Order 17 Rules 2 and 3 of C.P.C., and proceeded to decide the matter on merits and that the trial Court's failure to do so and its decision to dismiss the suit for default, have resulted in a miscarriage of justice.

7. The learned counsel for the respondents would contend that the above suit had already been dismissed thrice and was restored each time on applications filed by the petitioners, that for the fourth time, when the suit was pending for arguments, neither the petitioners nor their counsel appeared before the Court and in the absence of any representation, the trial Court had no other option, except to dismiss the suit for default and that it



C.M.A(MD)No.257 of 2020

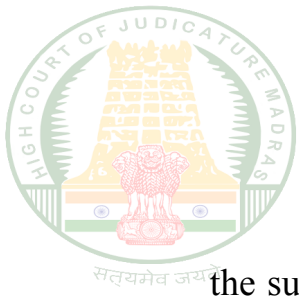
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is not mandatory for the trial Court to decide the matter on merits, merely because substantial evidence is available on record and that the matter lies within the discretion of the trial Court and at the same cannot be faulted.

8. It is evident from the records that the above suit was dismissed for default thrice on 14.03.2016, 29.09.2016 and on 24.04.2017 and that the dismissal order dated 14.03.2016 was set aside in I.A.No.179 of 2016 and the suit was restored vide order, dated 26.08.2016. Similarly, the dismissal orders, dated 29.09.2016 and 24.04.2017 were set aside the and the suits were restored vide orders passed in I.A.No.340 of 2016 and I.A.No.181 of 2017, dated 05.01.2017 and 22.11.2017 respectively.

9. Admittedly, the above suit came to be dismissed for default for the fourth time on 22.02.2019 and the present application in I.A.No.410 of 2018 is the fourth application for restoration of the suit filed under Order 9 Rule 9 of C.P.C.

10. The learned counsel for the petitioners would mainly contend that the trial Court, having already recorded the evidence on both the sides and



C.M.A(MD)No.257 of 2020

WEB COPY

the suit having been posted for arguments, ought not to have dismissed the suit for default. According to the petitioners, once substantial evidence had been adduced, the Court ought to have proceeded in accordance with Order 17 Rule 2 of C.P.C., and decided the suit on merits on the basis of the materials available on record, and not by resorting to dismissal for default.

11. No doubt, in the case on hand, the entire evidence on both the sides had already been recorded and the suit was posted only for arguments. Therefore, it is not a case where the Court was required to examine whether a substantial portion of evidence was available on record. Since the entire evidence had already been let in, the trial Court was undoubtedly vested with the discretion whether to proceed with the suit on merits or to dismiss the suit for default on account of the non-appearance of the plaintiffs. But, such discretion is required to be exercised judicially and not mechanically and at the same time, while exercising such discretion, the Court is entitled to take note of the conduct of the parties and the manner in which the proceedings have been prosecuted.



C.M.A(MD)No.257 of 2020

WEB COPY

12. In the present case, the suit had admittedly been dismissed for default on three earlier occasions and was subsequently restored. Even thereafter, when the suit was posted for arguments after the completion of trial, the plaintiffs again remained absent, resulting in the dismissal of the suit for the fourth time.

13.It is also pertinent to note that the petition for restoration was supported only by the affidavit of the Advocate on record and that none of the petitioners/plaintiffs had filed any affidavit explaining the causes for their non- appearance. The trial Court, taking note of the repeated defaults and the absence of any satisfactory explanation, has chosen not to exercise its discretion in favour of the petitioners/plaintiffs.

14. Considering the repeated defaults, negligence and lack of diligence exhibited by the petitioners/plaintiffs in prosecuting the suit, this Court is not inclined to hold that the discretion exercised by the trial Court suffers from any perversity or illegality warranting interference in appeal.



C.M.A(MD)No.257 of 2020

WEB COPY

15. Merely because evidence had been recorded on both sides, the petitioners/plaintiffs cannot claim restoration of the suit as a matter of right, especially when the conduct of the plaintiffs demonstrates gross negligence in prosecuting the suit. Consequently, this Court concludes that the impugned order dismissing the restoration petition cannot be faulted and that the Civil Miscellaneous Appeal, which is devoid of merits, is liable to be dismissed. Considering the other facts and circumstances, this Court holds that the respondents are entitled to costs.

16. In the result, this Civil Miscellaneous Appeal stands dismissed and the order dated 22.02.2019 made in I.A.No.410 of 2018 in O.S.No.38 of 2007 on the file of the Additional District and Sessions Judge, Periyakulam, is confirmed. The respondents shall be entitled to costs.

17.06.2026

NCC : Yes/No

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C.M.A(MD)No.257 of 2020

K.MURALI SHANKAR,J.

das

To

1.The Additional District and Sessions Judge,
Periyakulam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in

C.M.A(MD)No.257 of 2020

17.06.2026

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