

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 27th day of September 2023

I.A.No.494/2018

in

O.S.No.36/2005

M/s. Suryan Benefit Fund Limited,

Represented by J.Radhakrishnan . . . Petitioner / Plaintiff.

/Vs/

1. T.L.Thiagarajan

2. M.Chandra

3. T.S.Mahesraj

4. T.T.Giriraj

5. S.Prabhakar

6. Uma Maheswari . . . Respondents / Defendants.

This petition came up before me in this court for final hearing on 25.09.2023, in the presence of Tvl.N.Karunanidhi and N.Sathyabama, Advocates for the petitioner and Tvl.M.L.Ramesh, P.Sudalaimani and Nivedha Sudalaimani, Advocates for the respondents 5 and 6, the respondents 1 to 4 set exparte after intimation, upon hearing the arguments

of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This application is filed by the petitioner / plaintiff under Order 9 Rule 9 r/w. Section 151 of CPC, praying to restore the suit which was dismissed for default on 4.7.2016.

2. The case of the petitioner in brief :

The petitioner has filed the above suit against the defendants for recovery of money. Already exparte decree passed against which application to condone the delay in I.A.No.3113/2008 and the same was allowed on deposit of Rs.2 lakhs on 28.11.2015. After allowing the application petition to set aside the exparte preliminary decree and the copies were not furnished. All these orders were passed without the petitioner's knowledge. When the petitioner enquired about the status of the suit they were informed that the matter is pending for disposal. The petitioner's counsel also informed that the parties approached for compromise through their counsel. In the mean time, the matter came up for trial on 4.7.2016. For non prosecution of the suit the petitioner has been called absent and set exparte which is neither willful nor wanton. An opportunity may be granted in conducting the suit by restoring the same in the file. Hence, the petition.

3. The averments of counter filed by the 5th respondent and adopted by 6th respondent in brief :

The suit had been filed by the petitioner / plaintiff seeking relief of recovery of money from the respondents / defendants, by the plaintiff. The petition is not maintainable in the eye of law, or facts for the reason affidavit of the petitioner in IA 494/2018 age has shown 71 years and the age in final decree application in I.A.No.3113/2008 shows the same as 71 years, which create cloud of doubt over the legitimacy of the petitioner's affidavit. Further more this application has to be supported by Section 5 Limitation Act since the suit was dismissed for default on 2016 and this application was numbered as on 2018 only. The copies not furnished cannot be a ground for the petitioner to restore the suit. All the orders were passed without knowledge of petitioner has to be proved by way of valid documentary evidence by the petitioners. The respondents' counsel never approached for compromise. Since the suit is more than 11 years this court immediately posted the main suit for trial and fixed final hearing on 4.7.2016. On the said day the respondents and their counsel was physically present before this court but due to non appearance of the plaintiffs and their counsel the main suit was dismissed for default. Hence, prayed for dismissal of petition.

4. The only point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed to restore the suit which was dismissed for default on 4.7.2016. The petitioner states exparte decree was passed thereafter the respondents filed a petition to set-aside the exparte decree with the condone delay application in IA 3113/2008 which was allowed on 28.11.2015 on deposit of Rs.2 lakhs. The suit is filed to direct the defendants jointly and severally to pay the plaintiff a sum of Rs.16,25,319/- with interest at 24% per anum, from the date of plaint, till date of decree and thereafter at 6% per annum till realization on Rs.6,00,000/-, failing which pass an order of sale of suit schedule immovable property and appropriate the net sale proceeds into the court, if the sale proceeds are insufficient, grant a preliminary decree against the defendant, to grant personal decree against the defendants 1 to 6 jointly and severally in respect of suit claim.

6. The reason for allowing the suit for dismissal that on the day when the suit was posted for trial the defendants approached for compromise therefore they were failed to present before the court. The reason is not at all satisfactory but lethargic attitude of the plaintiff. This application was opposed by the respondents / defendants 5 and 6 as the

contention in the petition is not proved by the petitioner / plaintiff. The contention of the petitioner that the defendant approached for compromise is also denied. It is contended that the plaintiff and his counsel not appeared before the court. A counter is filed by 5 and 6 respondents others remained exparte. Therefore in the interest of justice petition has to be allowed with cost.

7. As the result, petition will be allowed on payment of cost of Rs.2,000/- to the respondents to be paid on or before 2.11.2023, otherwise petition stands dismissed. Call on 3.11.2023.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 27th day of September 2023.

Principal District Judge,
Chengalpattu.

Both side witness and exhibits :
Nil.

Principal District Judge,
Chengalpattu.