



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD)No.2174 of 2016

and

C.M.P. (MD)No.10116 of 2016

Ragunathan

.. Petitioner/Respondent/Plaintiff

Vs.

Pulithevan

.. Respondent/Petitioner/Defendant

PRAYER: Petition filed under Section 115 of Civil Procedure Code, to call for the records relating to the order in I.A.No.182 of 2016 in O.S.No.184 of 2010, dated 12.09.2016 on the file of the learned District Munsif, Thuraiyur and to set aside the same and to allow the above Civil Revision petition.

For Petitioner : Mr.N.Mohan

For Respondent : Mr.H.Lakshmi Shankar

O R D E R

This Civil Revision petition arises out of the order passed by the learned District Munsif, Thuraiyur, in I.A.No.182 of 2016 in O.S.No.184 of 2010, dated 12.09.2016.

2. Facts of the case as follows:-

The Revision petitioner filed a suit in O.S.No.184 of 2010 before the District Munsif Court, Thuraiyur, for declaration and permanent injunction against the respondent herein/defendant, their men and agents from interfering with the peaceful possession and enjoyment over the suit scheduled property. In the aforesaid suit, the respondent was set ex-parte and an ex-parte decree was passed on 04.12.2013. Thereafter, the respondent filed an application in I.A.No.182 of 2016 to set aside the decree along with a petition to condone the delay of 670 days to set aside the ex-parte decree. The Revision petitioner had filed a counter affidavit before the Court below. Considering the submission of the respondent, the application was allowed by imposing cost of Rs.1,500/- to the Revision petitioner/plaintiff to be paid by the respondent herein on or before 22.09.2016. Against the said order,



the Revision petitioner has filed the present Civil Revision petition before this Court.

3. The learned counsel for the respondent would submit that pursuant to the said order, the respondent herein deposited the cost of Rs.1,500/- before the Court below to the Revision petitioner. Further, in the light of the decision of the Hon'ble Supreme Court reported in **(2013) 12 Supreme Court Cases 649, Esha Bhattacharjee Versus Managing Director of Raghunathpur Nafar Academy and others**, wherein it was held that there should a liberal approach to condone the delay in setting aside the ex-parte decree. The Revision petitioner has also filed the counter affidavit before the Court below, against the petition to condone the delay of 670 days to set aside the ex-parte decree wherein it has been averred that the reasons stated in the affidavit filed by the respondent has not been supported by any oral and documentary evidence. However, taking into consideration the nature of the suit filed by the Revision petitioner, an opportunity shall be given to the respondent to contest the suit on merits.

4. Hence, this Court feels that it is appropriate to impose a heavy cost to the respondent for condoning the delay in filing the said application before this Court to set aside the ex-parte decree. It is fit and proper that this Court is directed to modify the order passed by the Court below in I.A.No.182 of 2016, with regard to the portion of the cost and enhance the cost to a sum of Rs.3,500/- (Rupees Three Thousand and Five Hundred only) to be paid by the respondent to the Revision petitioner and Rs.2,500/- shall be paid to Tamil Nadu Mediation and Conciliation Centre, attached to this Court within a period of four weeks from the date of receipt of a copy of this order, failing which, the I.A.No.182 of 2016 in O.S.No.184 of 2010 is automatically dismissed without further reference to this Court. The said terms are also agreed by the learned counsel for the respondent, to pay the said cost to the Revision petitioner as well as to the Mediation and Conciliation Centre, attached to this Court.

5. In view of the same, the Civil Revision petition is partly allowed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To



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

+1 cc to M/s.N.Mohan, Advocate in SR.No. 71843

+1 cc to M/s.H.Lakshmi Shankar, Advocate in SR.No. 71475

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