

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.45632 of 2016

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India aggrieved over the order, dated 26.08.2016, in M.W.No.6 of 2015 (IA-1/2016) of the 1st respondent, as illegal and arbitrary and consequently declare the order in M.W.No.6 of 2015, dated 05.12.2015, as bad in law.

The 2nd respondent filed the above MW against the petitioner before the 1st respondent. As the petitioner could not file counter and contest the case, the petitioner was set *ex parte* and the *ex parte* order was passed on 05.12.2015 by the 1st respondent. The petitioner filed an application on 26.01.2016, to set aside the *ex parte* order, dated 05.12.2015. The 1st respondent by order, dated 26.08.2016, dismissed the said application on the ground that the petitioner has not filed the said application to set aside the *ex parte* order within the prescribed period of 30 days.

Heard and perused the material available on record.

The order passed by the 1st respondent, dated 26.08.2016, is not illegal. Even though the application was filed after lapse of 30 days, in the interest of justice, this Court is of the view that an opportunity should have been given to the petitioner to raise the grounds and to place arguments before passing the order in said application. In the circumstances, the order, dated 26.08.2016, passed by the 1st respondent in MW No.6 of 2015 is set aside and consequently, the application filed by the petitioner on 26.01.2016 seeking to set aside the *ex parte* order, dated 05.12.2015 is restored. The 1st respondent is directed to fix a date for hearing the application filed by the petitioner to

set aside the *ex parte* order, and pass appropriate orders after hearing both the parties.

Accordingly, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO,J

Date: 30th December, 2016

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