

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(PD).No.1935 of 2014
and M.P.No.1 of 2014

S.Mohanamani

... Petitioner

Vs.

K.Subramanian,
Rep.by Power of Attorney
Vasanth

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the docket order dated 29.04.2014 in I.A.No.176 of 2014 in O.S.No.238 of 2012 on the file of the II Additional Sub Court, Salem.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.S.Mayilnathan

ORDER

Challenging the fair and final order passed in I.A.No.176 of 2014 in O.S.No.238 of 2012 on the file of the II Additional Sub Court, Salem, the 2nd defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.238 of 2012 for declaration, permanent injunction and for other reliefs.

3. Since the 2nd defendant failed to file his written statement before the trial Court, he was set exparte and an exparte order was passed on 05.10.2012. Thereafter, the 2nd defendant filed an application in I.A.No.176 of 2014 to set aside the exparte order dated 05.10.2012. In the affidavit, he has stated that all of a sudden his father had died on 15.11.2013 and therefore, he could not follow the case pending before the trial Court. In paragraph-4 of the affidavit, he has stated that he came to know about the exparte order only at a later stage and immediately, he has filed the present application. The plaintiff filed his counter and opposed the petition. The trial Court dismissed the petition stating that the application has been filed at a belated stage.

4. Since the trial Court has not passed any decree as against the 2nd defendant and it is only an exparte order passed against him, I am of the view that, in the interest of justice, the 2nd defendant can be given an opportunity to file his written statement and contest the suit on merits.

5. Accordingly, the fair and final order passed in I.A.No.176 of 2014 are set aside and consequently, the application in I.A.No.176 of 2014 in O.S.No.238 of 2012 stands allowed.

6.The 2nd defendant shall file his written statement within a period of two weeks from the date of receipt of a copy of this order and the II Additional Subordinate Judge, Salem, is directed to dispose of the suit in O.S.No.238 of 2012, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

7.In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

17.03.2017

To

1.The II Additional Sub Court,
Salem.

**M. DURAISWAMY, J.
va**

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