

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 08.02.2017****CORAM****THE HON'BLE MR. JUSTICE M.V.MURALIDARAN****CRP(NPD)No.4285 of 2010**

Kala

.. Petitioner

Vs

Raghu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and decretal order of the Court of the Additional Sub-Judge, Virudhachalam in I.A.No.319 of 2010 in O.S.No.56 of 2008 dated 08.10.2010.

For Petitioner : Mrs.V.Srimathi

For Respondent : No Appearance

ORDER

The Revision petitioner is the plaintiff in O.S.No.56 of 2008 on the file of the learned Additional Sub Court, Virudhachalam, filed this civil revision petition questioning the order in allowing Section 5 application filed by the defendant/respondent herein in I.A.No.319 of 2010 dated 08.10.2010.

2.It is seen from the records that the revision petitioner as plaintiff filed the above suit against respondent herein for recovery of money. It is further seen that in the said suit an ex-parte decree was passed on 16.06.2008.

3.The respondent/defendant filed an application in I.A.No.319 of 2010 seeking to condone the delay of 122 days in setting aside the ex-parte decree. The reason for delay stated by the respondent is that she has engaged an Advocate to represent the said suit on his behalf. But subsequently he came to know that the advocate engaged by her has not entered appearance and hence an ex-parte decree came to be passed against her. Thereafter as the respondent herein was suffered with Severe knee pain and therefore she was not in a position to contact her advocate to know about the stage of the suit. Subsequently when she came to know that the counsel engaged by her has not appeared, she filed the above application with some other Advocate.

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4.The revision petitioner filed detailed counter to the condone delay application, contending that the respondent herein had the knowledge of the ex-parte decree passed against her and she also paid

the decree amount by installment when warrant was issued against her in the execution petition in E.P.No.207 of 2008 filed by the revision petitioner. Therefore it is contented by the revision petitioner that the reason assigned by the respondent herein to condone the delay of 122 days in filing the ex-parte set aside application is an utter false that too when she paid part of decree amount in the execution proceedings.

5.It is surprise and shock for this Court to see the impugned order under challenge in this civil revision petition that the Trial Court has in a one line order allowed Section 5 application filed by the respondent herein without any discussion or proper finding in respect of the affidavit and counter affidavit filed by the parties.

6.It is no doubt true that the lower Court are having discretionary power to condone the delay by exercising the discretionary power conferred upon the lower Courts.

7.But in the case on hand, the lower Court has not at all considered the averments made by either parties, has mechanically in a one line order allowed the section 5 application filed by the respondent herein which is warranting interference by this Court.

8.Further this Court, time and again repeatedly issued direction to the lower Courts to pass a speaking order on merits by considering the case of both parties. This case is a clearing example case where the lower Court has passed a non speaking order which in the considered opinion on this Court is absolutely erroneous and illegal and the same is liable to be set aside.

9.In the result, this civil revision petition is allowed by setting aside the order and decree made in I.A.No.319 of 2010 in O.S.No.56 of 2008 dated 08.10.2010 on the file of the learned Additional Sub Judge, Virudhachalam with a direction to take up I.A.No.319 of 2010 and decide the same afresh by giving opportunity to either parties and with a further direction to pass a reasoned order. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

Note:Issue order copy on 31.01.2019
vs
Index:Yes
Internet:Yes

To
The Additional Sub-Judge, Virudhachalam.

08.02.2017

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M.V.MURALIDARAN,J.

VS



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