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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2226 of 2017

and

C.M.P. (MD) No.10896 of 2017

Mekhala

... Petitioner/Petitioner/
/ Defendant

vs.

S.R.G.Vignesh Raja

... Respondent/Respondent/
Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.372 of 2017 in O.S.No.164 of 2013 dated 13.10.2017 on the file of the Court of the III Additional District Judge, Tiruchirappalli.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.G.S.Asok Adhithyan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the learned III Additional District Judge, Tiruchirappalli, in I.A.No.372 of 2017 in O.S.No.164 of 2013 dated 13.10.2017.

2. The facts of the case are that the respondent herein, as plaintiff, has filed the suit in O.S.No.164 of 2013, against the petitioner herein/defendant for partition. In the said suit, defendant side evidence was closed on 23.06.2017 and therefore, the petitioner/defendant has filed the present interlocutory application in I.A.No.372 of 2017 to re-open the case for letting defendant side evidence. The said interlocutory application was dismissed by the Court below, against which, the present civil revision petition was filed.

3. The learned Counsel for the petitioner would submit that the petitioner was suffering from chicken pox at the relevant point of time and therefore, she was not able to attend the Court. He would further submit that the petitioner is having arguable points to put



forth her case and if no opportunity was given, the petitioner will be put to much prejudice and therefore, he prays for allowing the present revision petition.

4. On the other hand, the learned Counsel appearing for the respondent would submit that the suit was initially posted for defendant side evidence on 14.09.2016 and as the defendant did not let in her evidence, it was closed on 29.11.2016. Thereafter, the petitioner/defendant has filed re-open petition in I.A.No.150 of 2017 and the same was allowed and the matter was posted on 21.03.2017 for defendant side evidence. Even thereafter, the petitioner/defendant has allowed the defendant side evidence to be closed, without let in the evidence. However, the learned Counsel for the respondent submitted that the respondent has no serious objections for giving one more opportunity to the petitioner.

5. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

6. Perusal of record would show that the defendant side evidence was earlier closed on 29.11.2016 and thereafter, I.A.No.150 of 2017 came to be filed, which was allowed, as no objection was endorsed by the respondent and the matter was posted for defendant side evidence on 21.03.2017. As the petitioner/defendant has failed to utilise this opportunity also, the defendant side evidence was closed again and the petitioner's present interlocutory application to re-open the case was dismissed by the learned Judge by relying upon the judgment of the Hon'ble Apex Court, reported in **2014 (4) CTC 321**, in the case of **Gayathri Vs. M.Girish**, since the petitioner/defendant, by way of getting adjournments, has successfully stalled the proceedings, without letting in any evidence, for more than one year even after the earlier application in I.A.No.150 of 2017 was allowed.

7. Though there is no infirmity or illegality in the order passed by the learned Judge, considering the facts and circumstances of the case, this Court is of the view that one more opportunity shall be given to the petitioner to let in the defendant side evidence and the present Civil Revision Petition shall be allowed, but on terms as well as certain conditions.

8. In result, the impugned order dated 13.10.2017 is set aside, on condition that the petitioner shall pay a sum of Rs.2,000/- to the respondent, within a period of one week from the date of receipt of a copy of this order and the petitioner shall let in the defendant side evidence within a period of two weeks from the date of receipt of a copy of this order. If the petitioner does not comply with the above conditions, this Civil Revision Petition shall stand automatically dismissed, without any further reference to this Court and the learned Judge is at liberty to proceed with the case in the absence of the defendant side evidence.



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9. With the above directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The III Additional District Judge,
Tiruchirappalli.

+ 1 CC TO Mr.G.S.ASOK ADHITHYAN, ADVOCATE IN SR No. 53813
+ 1 CC TO Mr.B.SARAVANAN, ADVOCATE IN SR No. 54289

GK
TE/KK/SAR-2 : 20/03/2018 : 3P/4C

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