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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (NPD) (MD) .No.2106 of 2016

and

C.M.P. (MD) No.9874 of 2016

Osaimani ... Petitioner

Vs.

Visalatchi Aachi ... Respondent

PRAYER : Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 01.09.2016 passed in I.A.No.255 of 2012 in O.S.No.42 of 2004 on the file of the District Munsif Court, Arnathangi and allow the present Civil Revision Petition.

For petitioner	: Mr.M.Saravanan for Mr.R.Subramanian
For Respondent	: No appearance

ORDER

The revision petitioner was shown as the second defendant in O.S.No.42 of 2004 on the file of the learned District Munsif, Aranthangi. The respondent filed the said suit for recovering a sum of Rs.69,966/- from the revision petitioner herein and her husband Raju. The suit was filed on 29.06.1998. The defendants had filed vakalat through a counsel. But thereafter they did not contest the suit proceedings. Therefore, an *ex parte* judgment and decree came to be passed on 27.07.2006. To set aside the same, the revision petitioner filed an application under Order 9 Rule 13 of CPC. But then, there was a delay of 2236 days in filing the said petition. To condone the same, I.A.No.255 of 2012 was filed. The Court below dismissed the same by order dated 01.09.2016. Challenging the same, this Civil Revision Petition has been filed.



2. Though the respondent has been served notice and her name appears in the cause list, she has not chosen to enter appearance in person or through counsel.

3. The learned counsel appearing for the revision petitioner pointed out that the revision petitioner's husband was an alcoholic and that he passed away later. He would also plead that even during his life time, the revision petitioner was living separately.

4. Taking into account these facts, this Court is of the view that an indulgent view can be taken.

5. The learned counsel appearing for the revision petitioner submitted that pursuant to the condition imposed by this Court at the time of entertaining Civil Revision Petition, a sum of Rs.1,00,000/- (Rupees One Lakh only) was deposited by the revision petitioner to the credit of the suit in question. The revision petitioner has no objection for the plaintiff to withdraw a sum of Rs.50,000/- out of the said amount. This statement made by the learned counsel for the revision petitioner based on the instructions from the revision petitioner, is recorded.

6. As rightly pointed out by the learned counsel for the revision petitioner, the judgment passed by the trial Court cannot be called as a judgment at all. It does not satisfy the requirements of Order 20 of CPC. It is so cryptic and all that it contains is "*P.W. Examined. Exhibits A1 to A5 marked. Suit claim is proved. Suit is decreed as prayed for with cost.*"

7. That is why, notwithstanding the enormous delay in this case, this Court is adopting an indulgent approach. The order impugned in this Civil Revision Petition is set aside. The Court below shall number the set aside application and allow the same and give one more opportunity to the revision petitioner to contest the suit on merits.

8. The trial Court shall dispose of the suit entirely uninfluenced by the outcome of the Civil Revision Petition. Merely because, before this Court, the revision petitioner gave her consent to withdraw the amount, it does not mean she conceding the suit claim. If the suit is dismissed on merits, the revision petitioner can apply to the very same Court for return of the said amount.



9. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. District Munsif,
Aranthangi.

2. Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC To MR.R.SUBRAMANIAN, Advocate SR. NO. 84663

ORDER MADE IN
C.R.P. (NPD) (MD) .No.2106 of 2016
and
C.M.P. (MD) No.9874 of 2016
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