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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:05.06.2018

CORAM :
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.1111 of 2013 (NPD)
and
M.P. (MD)No.1 of 2013

Sundararajan

... Petitioner

Vs.

S.Gopal

... Respondent

PRAYER: Petition filed under Section 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 06.07.2012 made in I.A.No.550 of 2011 in O.S.No.2177 of 2004 on the file of the Principal District Munsif, Tirichirapalli and set aside the same and allow this civil revision petition.

For Petitioner : Mr.S.Vinayak

For Respondent : Mr.George Raja
for M/s.Ajmal Associates.

ORDER

The plaintiff in the suit in O.S.No.2177 of 2004 on the file of the Principal District Munsif Court, Tirichirappalli, is the revision petitioner in the civil revision petition.

2.The revision petitioner filed a suit in O.S.No.2177 of 2018 on the file of the District Munsif Court, Tirichirappalli for recovery of possession. The suit is filed under Section 6 of the Specific Relief Act and under Order 7, Rule 1 of Civil Procedure Code. The suit property is an extent of 20 cents of land in T.S.No.51, Thamalavarubayam Village, within the corporation limits of Tricirapalli. It is stated that the suit was decreed exparte by the judgment and decree dated 11.12.2012. Stating that the second defendant did not have knowledge about the hearings and that he could not engage an advocate, the second defendant filed a petition to set aside the exparte decree with a delay of 473 days. The petition to condone the delay in I.A.No.550 of 2011 in O.S.No.2177 of 2004 was allowed on payment of a sum of Rs.2,000/- as costs by the trial Court. Aggrieved by the same, the plaintiff has preferred this Civil Revision Petition.

3.The learned counsel for the revision petitioner vehemently contended that the trial Court ought not to have condoned the inordinate delay of 473 days in filing a petition to set aside the exparte decree.



4.The trial Court has considered elaborately the rival submissions and found that the second defendant should be shown some indulgence and an opportunity to contest the suit on merits should be given. It is also found by the trial Court that no summons was served on the residential address of the second defendant.

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5.The contention of the second defendant that he had no knowledge about the disposal of the suit was accepted by the trial Court. This Court has repeatedly held that the Court should always be lenient towards entertaining the applications unless non appearance is intentional or to drag on the proceedings. In this case, the suit itself has been filed under Section 6 of the Specific Relief Act.

6.In such circumstances, denying an opportunity to contest the matter on merits will cause serious prejudice and irreparable loss to the second defendant especially when the contestant had not received any notice. As a result, this Court find no reason to interfere with the order passed by the lower Court in condoning the delay of 473 days in filing the petition to set aside the exparte decree.

7.In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. However, taking into consideration the fact that the suit is filed in the year 2004 and the age of the revision petitioner is more than 73 years, this Court is inclined to give further direction to the trial Court to dispose of the matter. Accordingly, the Principal District Munsif, Trichirappalli is directed to expedite the trial and dispose of the suit in O.S.No.2177 of 2004 within a period of six months from the date of receipt of a copy of this order provided the petition to set aside the exparte decree filed by the second defendant is also allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Tirichirapalli.

+1CC to M/s.Ajmal Associates, Advocate, SR.No.66979

C.R.P. (MD) No.1111 of 2013 (NPD)

and

M.P. (MD) No.1 of 2013

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