

A.No. 1647 of 2019
in
C.S.No. 71 of 2017

R.SUBRAMANIAN, J.

This application has been filed seeking to set aside the ex-parte order dated 15.02.2019 passed in C.S.No. 71 of 2017.

2. The defendant in the suit/applicant herein, was served with the suit summons on 10.06.2017. The counsel for the defendant had taken time to file written statement on various occasions. Finally on 24.01.2019, this Court had passed the following order:

"At request of learned counsel for the respondent for filing written statement, post finally on 15.02.2019, failing which the defendant would be set ex-parte and the matter would be posted for recording ex-parte evidence."

3. Since the written statement was not filed on 15.02.2019 and a representation was made by the learned counsel for the defendant that the defendant has already filed an application for rejection of plaint under Order 7 Rule 11, this Court passed an order setting defendant as ex-parte on 15.02.2019.

4. The present application has been filed seeking to set aside the said order. It is also averred that the written statement along with an application to condone the delay in filing written statement has been filed. In the affidavit filed in support of this application, the applicant would state that his wife had delivered a child on 18.07.2017 and since the delivery was complicated, his attention was only on the well being of his wife and the new born child. Hence, he could not concentrate on filing the written statement. This application is resisted by the respondent/plaintiff contending the reason assigned is false and that the applicant had been making several complaints against the respondent during the relevant time.

5. Be that as it may, an order passed on 15.02.2019 is only an order setting the defendant ex-parte. Now that the statement has been filed along with an application to condone the delay, I am of the considered opinion that this application should be allowed in the interest of justice in order to provide opportunity to defendant to contest the suit.

6. For the foregoing reasons, the application is allowed ex-parte order dated 15.02.2019 is set aside.

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7. Registry is directed to number the application to condone the delay in filing the written statement, if it is otherwise in order and post the same on 05.04.2019. In the meantime, the defendant is required to file the counter in A.No. 1649 of 2019 also.

Post on 05.04.2019.

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27.03.2019



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