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Rev.Aplc.(MD)NO.223 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

REV.APLC. (MD) No.223 of 2019 IN

C.R.P. (MD) No.475 of 2016

Muthu Chettiar

... Petitioner/Respondent

Vs.

Valliyammai

... Respondent/Civil Revision petitioner

**Prayer:** Review application is filed under Order 47 Rule 1 and 2 r/w. Section 114 of C.P.C., to review the order dated 26.09.2018 passed in C.R.P.(MD)No.475 of 2016 on the file of this Court.

Prayer in CRP(MD). 475/ 2016 :

Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order in IA.No.4/2013 in OS.No.10/2011 on the file of the Principal District Judge, Pudukkottai, Pudukkottai District dated 09.09.2015, and allow the Civil Revision Petition.

|                |                         |
|----------------|-------------------------|
| For Petitioner | : Mr.S.M.S.Johnny Basha |
| For Respondent | : No appearance.        |

### O R D E R

The review applicant is the plaintiff in O.S.No.10 of 2011 on the file of the Principal District Judge, Pudukkottai. It was a suit for specific performance. It was decreed exparte. To set aside the same, the defendant in the said suit filed an interlocutory application. But there was a delay of 428 days in filing the said petition. To condone the delay, I.A.No.4 of 2013 was filed. The Court below by order dated 09.09.2015 dismissed the interlocutory application. Challenging the same, the defendant in the suit filed C.R.P.No.475 of 2016 before this Court.

2. Though notice was ordered to the review applicant herein, he remained ex-parte in the civil revision petition.

3. Therefore, this Court had to go by the submission of the revision petitioner. The revision petitioner's counsel strongly submitted that no subsequent development has taken place after the exparte decree was passed. Accepting the said submission, since valuable property rights are involved, the civil revision petition was allowed by order dated 26.09.2018.



4. The plaintiff seeks review of the order made in the civil revision petition. Though the revision petitioner has been served and her name is printed in the cause list, she has not chosen to enter appearance.

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5. The learned counsel appearing for the review applicant pointed out that the basis for allowing the civil revision petition filed by the defendant was that the counsel for the revision petitioner made a statement that no subsequent development has taken place after the exparte decree was passed. But it is seen that after the exparte decree was passed on 13.09.2011, a sale deed was executed by the Court on 02.03.2012 and that based on the same, the plaintiff filed a subsequent suit in O.S.No.435 of 2012. The said suit was filed for recovery of possession and other reliefs. It is stated that the defendant in the said suit filed a subsequent suit also and the said suit was decreed on 31.10.2019. Since the statement made by the revision petitioner turned to be incorrect which are based on the facts on records, I have no hesitation to review and set aside the order made in the revision petition. The review application stands allowed. The order dated 26.09.2018 made in C.R.P.(MD)No.475 of 2016 is set aside.

6. Even though I have to allow the review application, I must place on record that these developments were due to the petitioner's failure to appear before this Court, when the main civil revision petition was taken up and disposed of. Therefore, the petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) towards costs to the credit of High Court Legal Services Authority.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

The Principal District Judge,  
Pudukkottai, Pudukkottai District.

Copy to: The Officer in Charge,  
Legal Services Authority,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.SM.S.JOHNNY BASHA, Advocate ( SR-102212[F]

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