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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD) .No.1939 of 2019

and

C.M.p. (MD) .No.9916 of 2019

Kannaiyan

... Petitioner/Respondent
/Plaintiff

Vs.

Susila

... Respondent/Petitioner/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.07.2019 made in I.A.No.845 of 2015 in O.S.No.1564 of 2010 on the file of the Ist Additional District Munsif, Trichy.

For Petitioner : Mr.K.Prabhakar
For Respondent : Mr.C.Vakeeswaran

O R D E R

This Civil Revision Petition has been filed against the order dated 15.07.2019 passed in I.A.No.845 of 2015 in O.S.No.1564 of 2010 by the learned Ist Additional District Munsif, Trichy.

2.The revision petitioner, who is the plaintiff in the suit, has filed O.S.No.1564 of 2010 for declaration and permanent injunction and the respondent herein, who is the defendant in the suit, has filed I.A.No.845 of 2015, for setting aside the ex-parte decree.

3.After hearing both the parties, the Court below has allowed the said I.A. Further, the respondent herein has filed I.A.No.618 of 2013 to condone the delay in filing the application to set aside the exparte decree. The said I.A was allowed on condition to pay a sum of Rs.2,500/-. The said amount was also paid and the condition was also complied with. Subsequently, the present I.A was numbered and ~~service copy for the respondent~~ing. Further, the revision petitioner herein made a



submission before the Court below that he has not filed any revision challenging the order passed in I.A.No.618 of 2013 and in this regard, he has not furnished any proof..

4.Today, when the matter is taken up for hearing, the learned counsel appearing for the revision petitioner herein fairly submitted that there is no revision filed against the order passed in I.A.No.618 of 2013.

5.The learned counsel for the revision petitioner would contend that though the delay application was filed, the respondent herein failed to explain the reason for non-appearance before the Court below. Therefore, the order passed in I.A.No.845 of 2015 is not bearing in the order passed in I.A.No.618 of 2013. He further contended that the Court below should have passed an order independently and without considering the merits of the case, the order was passed in I.A.No.618 of 2013. He further contended that since there is no sufficient reason for non-appearance of the respondent before the Court below, the Court below should have dismissed the said application, instead of allowing the same.

6.The learned counsel appearing for the respondent would contend that the Court below has allowed the application, since it is an consequential application, the Court below allowed the application and no appeal or revision has been filed against the order passed in I.A.No.618 of 2013 for condonation of delay in filing the setting aside the application to set aside the exparte decree passed in the Suit. Further, the Court below with an intention to give an opportunity to both parties to set aside the ex parte decree passed in O.S.No.1564 of 2010. In spite of service of summons, since the revision petitioner herein has given different address and therefore, the respondent was not able to appear before the Court below.

7.The revision petitioner as well as the respondent would fairly submit that I.A.No..618 of 2013 was filed to condone the delay in filing the application to set aside the exparte decree and the Court below has passed a detailed order with regard to the service of notice and other things and allowed the said I.A on payment of cost of Rs.2,500/- and the said amount was also paid and the condition was also complied with. Subsequently, the Court below numbered the application in I.A.No.845 of 2015 to set aside the exparte decree.

8.On a perusal of the order it is seen that an exparte order was passed without giving any notice and without service of summons. Further, the Court below taking into consideration of all those aspects in order to provide an opportunity to both parties, allowed the said I.A. Therefore, the order of the Court below is just and fair and this Court do not find any infirmities in the order passed



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

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Ist Additional District Munsif,
Trichy.

+1 CC to M/s.C. VAKEESWARAN, Advocate (SR-99576[F] dated 20/11/2019

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-99789[F] dated 20/11/2019)

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19.11.2019

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