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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.3.2020

CORUM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No. 3560 of 2019

C.M.P.No.23342 of 2019

Velu @ Velmurugan ... Petitioner/Plaintiff

Vs.

Saifullah Sahib ... Respondent/Defendant

Civil Revision petition is filed under Section 115 of C.P.C. against the order, dated 6.07.2019 passed in I.A.No.52 of 2016 in O.S.No.109 of 2010 on the file of the Subordinate Judge, Chidambaram.

For Petitioner : Mr.R.Chellamuthu

For Respondent : Mr.M.Mahesh

#### O R D E R

The petitioner has filed a suit in O.S.No.109 of 2010 for specific performance against the respondent herein. In the aforesaid suit, the respondent was set exparte and exparte decree was passed on 19.12.2013. The respondent filed an application to set aside the exparte decree along with an application to condone the delay of 365 days in filing the application to set aside the exparte decree. The trial Court considering the reason stated in the affidavit, allowed the application on payment of cost of Rs.1000/- to the petitioner herein. Challenging the said order, the plaintiff is before this Court.

2. According to the learned counsel appearing for the petitioner, the reason stated in the affidavit is not a satisfactory one and the trial Court without considering the objection raised by the revision petitioner, erroneously allowed the application. Therefore, the said order is liable to be set aside.

3 Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and perused the materials available on record.



4 The suit is filed specific performance of the sale agreement executed by the respondent. According to the learned counsel appearing for the revision petitioner, on 14.6.2019, the respondent/defendant himself had appeared in person and obliged to comply with the earlier order of the Court to give his sample thumb impression before the Court. In order to avoid giving sample thumb impression before the Court, the defendant/respondent herein had deliberately absented on 19.12.2013 and therefore, exparte decree was passed against the respondent/defendant. According to the counsel appearing for the respondent, the respondent had appeared before the Court for more than 20 hearings for the report to be submitted by the finger print expert. Since the respondent was staying in Dubai, was not in a position to get leave and therefore, he could not contest the case on merit. On 19.6.2019, in the presence of both parties, thumb impression of the respondent was obtained by the Court below. Therefore, the Court below accepting the reason stated in the affidavit filed by the respondent, allowed the application on payment of cost. In the light of the judgment of the Hon'ble Supreme Court in Esha Bhattacharjee V. Managing Committee of Raghunathpur, Nafar Academy and others [2013(5) CTC 547] wherein, the Hon'ble Supreme Court has held that the Court should follow liberal approach while dealing with the application to condone the delay to set aside the exparte decree and therefore, opportunity shall be granted to the respondent to put forth his case on merit. In view of the same, there is no error in allowing the application by the Court below. Thus, there is no ground to interfere with the order passed by the Court below.

5. Accordingly, the Civil Revision petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

Vaan

To

The Subordinate Judge, Chidambaram.

+1cc to Mr.R.Chellamuthu, Advocate SR.No.23738

C.R.P.No.3560 of 2019  
and C.M.P.No.23342 of 2019

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