



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A(MD)No.157 of 2020

and

C.M.P(MD)No.2647 of 2020

M.Rajalakshmi .. Appellant/Petitioner/Defendant

Vs.

Rajaperumal .. Respondent/Respondent/Plaintiff

PRAYER: Civil Miscellaneous Appeal is filed to call for the records pertaining to the fair and decreetal order in I.A.No.1 of 2019 dated 21.11.2019 in O.S.No.62 of 2011, on the file of the learned First Additional District Judge, Tiruchirapalli and set aside the same by allowing the present Civil Miscellaneous Appeal.

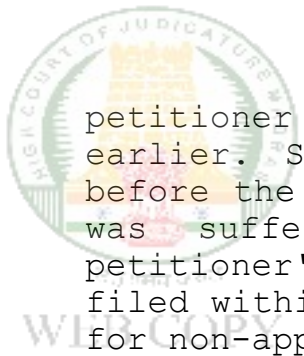
For Petitioner : Mr.R.Rajaraman
For Respondent : Mr.K.S.Vamsidhar

ORDER

This Civil Miscellaneous Appeal is directed against the order dismissing the petition filed by the appellant in I.A.No.1 of 2019 in O.S.No.62 of 2011, on the file of the I Additional District Judge (PCR), Tiruchirappalli to set aside the ex-parte decree passed against the appellant, who is the defendant in the suit.

2.In the affidavit filed in support of the Interlocutory application, the petitioner/appellant stated that she was suffering from Jaundice for two weeks prior to the date of hearing and that, therefore, she could not meet her advocate and give instructions for cross-examination of plaintiff's witnesses. There was no delay in filing the petition under Order 9 Rule 13. From the affidavit filed by the petitioner, it is seen that the petitioner is aged about 74 years at the time of filing the petition before the lower Court in the year 2007.

3. Considering the age of the petitioner and the reasons stated by the petitioner in the affidavit filed in support of the petition, this Court is unable to appreciate the observations of the learned Judge and to dismiss the petition only on the ground that the



petitioner had allowed to set her ex-parte on three occasions earlier. So long as the petitioner has given convincing reasons before the lower Court for her non-appearance and the fact that she was suffering from illness is not seriously disputed, the petitioner's application to set aside the ex-parte decree, which is filed within the time can be allowed by imposing costs if the reason for non-appearance is flimsy.

4. The lower Court has stated that the discretion cannot be exercised in favour of the petitioner because the petitioner allowed herself to be set ex-parte on three occasions earlier. Though such reasons relating to the past conduct of the petitioner can be cited for imposing appropriate costs, the petition to set aside the ex-parte decree which is otherwise filed giving sufficient reasons for the non-appearance as on the date of hearing, cannot be summarily dismissed.

5. Hence, this Court is of the view that the learned First Additional District Judge (PCR), Tiruchirappalli has not exercised his discretion judicially. In the interest of justice it is appropriate to give one more opportunity to the petitioner to contest the suit on merits. Accordingly, the order of learned First Additional District Judge (PCR) in I.A.No.1 of 2019 in O.S.No.62 of 2011 dated 21.11.2019 is set aside and the petition filed by the appellant in the lower Court in I.A.No.1 of 2019 stands allowed. Considering the fact that the petitioner had earlier allowed herself to be set ex-parte on three occasions, the petitioner is directed to pay a sum of Rs.2,000/- to the respondent/plaintiff within a period of three weeks from the date of receipt of a copy of this order.

6. With the above observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The First Additional District Judge,
Tiruchirapalli.

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Copy to:

The Section Officer, (2 - Copies)
V.R.Section,
Madrurai Bench of Madras High Court, Madurai.

C.M.A (MD) No.157 of 2020
09.07.2020

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