



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.937 of 2020

and

C.M.P. (MD)No.6108 of 2020

WEB COPY

B.Saleem ... Petitioner/Petitioner/Defendant

vs.

B.Essa ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and executable order dated 07.08.2020 passed in I.A.No.711 of 2018 in O.S.No.163 of 2014 on the file of the District Munsif Court, Madurai Taluk, Madurai and allow this Civil Revision petition.

For Petitioner : Mr.J.Barathan
For Respondent : Mr.K.C.Ramalingam

ORDER

This Revision Petition is filed by the plaintiff in O.S.No.163 of 2014 challenging an order of the learned District Munsif Court, Madurai Taluk, wherein he condoned the delay of 867 days for filing an application to set aside the exparte decree passed by him. This petition came to be allowed by the trial Court on the defendant pay cost of Rs.1,000/-.

2. Heard both sides.

3.The learned counsel for the revision petitioner submitted that this is the second such application filed by the defendant and on earlier occasion, the revision petitioner did not even object for setting aside the exparte decree for not filing written statement. It has not sensitized the defendant and he continued to err on the same score and hence, he was set exparte yet again. The learned counsel added that the indulgence of the Court in aid of substantial justice may not be stretched over to grant an unfair advantage to continuously erring defendant, whose attitude towards this. It almost exploits that he is habituated to err.

4. The learned counsel for the respondent would submit, on instructions that the defendant has filed written statement now and since the suit is for declaration of title, the substantial right of the defendant is involved and prayed for due indulgence of this Court.



5. Indulgence that this Court is willing to show only on premium. Since this is the second time, the defendant is get erring. Therefore, this Court while confirming the order of the trial Court in I.A.No.711 of 2018 condoning the delay, chooses to enhance the costs from Rs.1,000 to Rs.10,000/-.

6. This Court was informed during the course of argument that Rs.1,000/- as ordered by the trial Court has already been deposited before the trial Court. Therefore, the defendant is now directed to pay the remaining Rs.9,000/- on before 18.12.2020.

7. In conclusion, this Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. List the matter on 18.01.2021 for reporting compliance.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The District Munsif , Madurai Taluk, Maudrai.

+1 CC to M/s.T.R.JEYAPALAN, Advocate (SR-24977[F] dated 10/12/2020)

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(NS) CO

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