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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.463 of 2019

and

C.M.P.No.3079 of 2019

Mr.Nagarajan ... Petitioner/Petitioner/Defendant

Vs

Mr.J.Moses Harris ... Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order Fair and Decretal order dated 30.11.2018 made in I.A.No.1496 of 2018 in O.S.No.4405 of 2016 on the file of II Assistant Judge, City Civil Court, Madras and to allow the Civil Revision Petition.

For Petitioner : Mr.C.Prabakaran.

For Respondent : Mr.Kasirajan.

O R D E R

This Civil Revision Petition has been filed challenging the order passed on 30.11.2018 in I.A.No.1496 of 2018 in O.S.No.4405 of 2016 on the file of the II Assistant Judge, City Civil Court, Chennai.

2.It is seen from the records that I.A.No.1496 of 2018 was filed under Order XXXVII Rule 4 read with Section 151 of Civil Procedure Code to set aside the exparte decree dated 27.10.2017 passed in O.S.No.4405 of 2016, which was filed by the Respondent against the Petitioner for recovery of a sum of Rs.9,20,000/- (Rupees Nine Lakhs Twenty Thousand only) with interest.

3.The Learned Counsel for the Petitioner submitted that when this Suit was posted on 22.09.2017, the Learned Counsel for the Plaintiff requested summons for Judgment and hence, the Suit was adjourned to 03.10.2017 for summons for Judgment. Subsequently, the summons for Judgment was served and the Suit was adjourned to 12.10.2017 for filing leave to



defend Petition. Again, on 12.10.2017 the Learned Counsel for the Plaintiff appeared before the Court and filed adjournment Petition and the Court adjourned the case to 23.10.2017. On 23.10.2017, the Petitioner was set exparte for non filing of leave to defend Petition. The reasons for non filing of leave to defend Petition was that the Petitioner could not contact his Advocate to prefer leave to defend Petition as he was working as an Educational Officer in Indian Navy, Pune and due to his busy schedule, he was not able to file leave to defend Petition in time.

4.The Learned Counsel for the Petitioner submitted that the reason for not filing leave to defend Petition is genuine. It is also submitted by the Learned Counsel for the Petitioner that the Petitioner was on voyage during the relevant point of time and it is also a reason for not contacting his Advocate. Therefore, the Learned Counsel for the Petitioner prayed for setting aside the order of the Learned II Assistant Judge and allow this Petition.

5.However, the Learned Counsel for the Respondent submitted that this is not the first time, the Petitioner was set exparte. In the earlier occasion also, he was set exparte and he filed an Application in I.A.No.1611 of 2017 for setting aside the exparte order which was allowed. Again he remained exparte and did not properly prosecute the case. Therefore, he was set exparte. His intention is only to drag on the proceedings and the reasons stated by him have no merits. Further, the reason now put forward by the Learned Counsel for the Petitioner that the Petitioner was engaged in voyage and he was in mid sea and that was the reason for him for not contacting the Advocate, is a new reason and this reason was not stated in the Affidavit filed in support of the Petition.

6.Considered the rival submissions made by the Learned Counsel for the Parties and perused the materials placed before this Court.

7.When the matter was taken up in the last hearing on 08.09.2021, the Petitioner was directed to produce document to show that the Petitioner was in voyage at the relevant point of time. Even today, when the matter is taken up for hearing, the Petitioner was unable to produce any document in support of his claim. Further, it is seen that it is not the first time, the Petitioner was set exparte. He was set exparte earlier and on Petition, the exparte order was set aside. Again, he remained exparte for unjustifiable reasons. Therefore, this Court finds that there is no necessity to interfere with the order of the Learned II Assistant Judge, City Civil Court, Chennai and the same is confirmed.



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8.Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CJ Conf)

//True copy//

Sub Assistant Registrar

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To

The II Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.C.Prabakaran, Advocate SR.No.48452

+1cc to Mr.P.Rajkumar Pandian, Advocate SR.No.48842

C.R.P.No.463 of 2019
and
C.M.P.No.3079 of 2019

NR(CO)
GMY(11/10/2021)