

A.No.3123 of 2021
in
C.S.No.402 of 2011

R.SUBRAMANIAN, J.

This application has been filed by the 4th defendant in this suit seeking to set aside the exparte decree that was granted on 08.03.2017. This application was preceded by an application under Section 5 of the Limitation Act seeking condonation of delay of 1579 days in seeking seeking to set aside the exparte decree. The reasons assigned are that the 4th defendant was subsequently impleaded in the suit. Despite such impleading, the suit summons were not served and the names of the 4th defendant or its counsel was not printed in the cause list on the date, when the defendants were actually set exparte and on the date when the exparte decree came to be passed.

2. It is also the claim of the applicant that despite specific direction by this Court for trial of this suit along with another suit in C.S.No.53 of 2011, these suits were posted separately, which resulted in the exparte decree. The records also reveal that the suit summons were never served on the 4th defendant in the suit, after its impleading. The cause list of the relevant dates also demonstrate that the name of the counsel for the 4th defendant was not printed in the cause list, when the 4th defendant was actually set exparte and, on the subsequent date, when the exparte judgment came to be passed. I am of the considered opinion that the applicant has made out sufficient cause for non-appearance on the fateful day. Hence, this application is allowed, the exparte decree dated 08.03.2017 is set aside.

R.SUBRAMANIAN, J.

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3.Since the suit is one for copyright infringement and the parties claim under the same title holder, the decree becomes an indivisible decree and therefore, it has to be set aside in its entirety. Therefore, the entire decree is set aside, the learned counsel for the plaintiff is directed to serve the suit summons on the counsel for the 4th defendant, who has entered appearance, in terms of Order 4 Rule 7 Sub-rule 3 of the Original Side Rules. Upon such service, the 4th defendant is granted four weeks time from the date of service to file written statement.

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07.09.2021

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