



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.4179 of 2019

and

C.M.P.No.27201 of 2019

Sivagami

...Petitioner/Defendant

Vs

Mythili

...Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 18.11.2019 passed in I.A.No.150 of 2018 in O.S.No.33 of 2018 on the file of the Additional District Judge, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani.

For Respondent : No appearance.

O R D E R

This Petition is filed to set aside the order passed in I.A.No.150 of 2018 in O.S.No.33 of 2018 on the file of the Learned Additional District Judge, Dharmapuri on 18.11.2019.

2.The Learned Counsel for the Petitioner submitted that the Respondent has filed a Suit in O.S.No.33 of 2018 seeking the relief of specific performance of contract by executing the sale deed after receiving the balance sale consideration on the basis of sale agreement dated 06.04.2016 or for the alternative relief of return of advance amount. The Petitioner entered appearance in the Suit through Advocate. When the matter was posted for filing written statement on 28.09.2018, the Petitioner was suffering from viral fever and he could not appear before the Court and written statement could not be filed. Therefore, the Petitioner was set exparte on 28.09.2018.

3.Immediately, the Petitioner filed I.A.No.150 of 2018 under Order 9 Rule 7 of Civil Procedure Code for setting aside the exparte order passed against him on 28.09.2018. However, the



Petition came to be dismissed stating that reason stated by the petitioner is not satisfactory. The Learned Counsel for the Petitioner further submitted that this is a Suit for specific performance and the Petitioner is denying the execution of sale agreement. Therefore, he prayed for an opportunity to the Petitioner to contest the Suit.

4.Considered the submissions of the Learned Counsel for the Petitioner and perused the records. There is no representation for the Respondent.

5.From the submissions of the Learned Counsel for the Petitioner and the materials filed in a form of typed set, it is evident that the Petitioner was set exparte for not filing the written statement. Within a month from the date he was set exparte, he filed Petition to set aside the exparte order. This being the Suit for specific performance on the basis of sale agreement and the execution of sale agreement is denied by the Petitioner, this Court is of the considered view that Petitioner should have been given an opportunity to file written statement and to contest the case.

6.However, the Learned Additional District Judge, Dharmapuri found that the reasons stated for not filing written statement are not satisfactory and dismissed the Petition. The Petitioner said that he was suffering from viral fever and therefore, he could not appear before the Court and file written statement. This reason, in the considered view of this Court, is sufficient to condone the failure on the part of the Petitioner to file written statement on 28.09.2018.

7.In this view of the matter, this Court sets aside the order passed by the Learned Additional District Judge, Dharmapuri in I.A.No.150 of 2018 in O.S.No.33 of 2018 and allows the Civil Revision Petition. No costs. Consequently, connected Miscellaneous Petition is closed. The Learned Additional District Judge, Dharmapuri is directed to receive written statement and proceed to dispose the case on merits and in accordance with law.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Dharmapuri.

2. The Section Officer,
VR Section,
High Court, Madras - 104.

+lcc to Mr.V.Sakkarapani, Advocate, S.R.No.52530

+lcc to Mr.M.Jayachandran, Advocate, S.R.No.53309

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and
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NSK 26/10/2021