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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.3445 of 2018
and
CMP No.19331 of 2018

D.Nanda Kumar ... Petitioner/Defendant/Petitioner

Vs

T.Usha Rani ... Respondent/Plaintiff/Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order in IA.No.17197 of 2017 in OS.No.8473 of 2010 dated 03.09.2018 passed by the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.Gopalakrishnan B

For Respondent : Mr.J.Milton Arul Rajendran

ORDER

This Civil Revision Petition is filed against the fair and decretal order passed in IA.No.17197 of 2017 in OS.No.8473 of 2010 dated 03.09.2018 passed by the learned VI Additional Judge, City Civil Court, Chennai, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for declaration and permanent injunction. When the suit was posted for trial, the petitioner failed to appear before the trial court and as such he was set exparte and exparte decree was passed on 12.06.2015. Therefore, the petitioner filed petition to set aside the exparte decree with the delay of 850 days.

3. On perusal of the affidavit filed in support of the condone delay petition, revealed that the counsel who appeared on behalf of the petitioner before the court below was selected

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as District Judge in the year 2014. The said fact was not aware by the petitioner and as such he was not informed about the exparte decree passed as against the petitioner herein. That apart, the petitioner raised specific averment that the suit documents are fabricated and the vendor of the plaintiff has no title over the suit property. Therefore, the court below dismissed the petition only for the reason that the reasons stated by the petitioner is not convincing. The petitioner specifically stated that the counsel who appeared on behalf of the petitioner was selected to the post of District Judge of the Tamil Nadu State Judiciary. Therefore, the petitioner may be given one more opportunity to defend the suit on merits and in accordance with law.

4. Accordingly, this civil revision petition is allowed and the order passed in IA.No.17197 of 2017 in OS.No.8473 of 2010 dated 03.09.2018 by the learned VI Additional Judge, City Civil Court, Chennai is set aside, on payment of cost Rs.10,000/- (Rupees Ten Thousand only) directly to the respondent within a period of two weeks from the date of receipt of copy of this order, failing which the above order passed by this Court shall stand automatically cancelled. Thereafter, on such payment, the trial court is directed to dispose of the suit within a period of six months thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok

To

The VI Additional Judge,
City Civil Court, Chennai

+2 ccs to Mr.B.Gopalakrishnan, Advocate (SR No.30876)

C.R.P.No.3445 of 2018

VBM (CO)
PR (28/07/2021)

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