



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

REV APLC(MD) 46 of 2020
in CMA(MD).157 of 2020

Shri.Rajaperumal

.. Appellant/Respondent

Vs

Smt.M.Rajalakshmi

... Respondent/Appellant

Prayer: Civil Revision Petition filed under Order XLVII Rule I of C.P.C., to review the judgment of this Court dated 09.07.2020 made in C.M.A(MD).No.157 of 2020.

Prayer in CMA(MD). 157 of 2020 :

PRAYER: Civil Miscellaneous Appeal is filed to call for the records pertaining to the fair and decreetal order in I.A.No.1 of 2019 dated 21.11.2019 in O.S.No.62 of 2011, on the file of the learned First Additional District Judge, Tiruchirapalli and set aside the same by allowing the present Civil Miscellaneous Appeal and thus render justice.

For Petitioner

: Mr.K.S.Vamsidhar

O R D E R

This review application is filed to review the judgment of this Court dated 09.07.2020 passed in C.M.A(MD).No.157 of 2020.

2.The appeal in C.M.A(MD).No.157 of 2020 is directed against the order passed by the learned I Additional District Judge, Tiruchirappalli, dismissing I.A.No.1 of 2019 in O.S.No.62 of 2011, to set aside the ex-parte decree as against the appellant, who is the defendant in the suit.

3.The petition in I.A.No.1 of 2019, to set aside the ex-parte decree, was dismissed mainly on the ground that the defendant had allowed the suit being decreed ex-parte on three earlier occasions and that on all occasions the ex-parte decree was set aside on the application filed by the defendant under Order 9 Rule 13 of C.P.C. The defendant, on the fourth occasion, has given reasons stating that she was suffering from Jaundice and hence, she could not appear on the date of hearing. Aggrieved by the order of lower



Court, the respondent herein has filed an appeal before this Court. This Court allowed the appeal on condition that the defendant/appellant should pay a sum of Rs.2,000/- as cost, since the petitioner allowed herself being set ex parte on three occasions. The Court has to consider the bona fides and cause for non appearance. Past conduct cannot be the sole ground to dismiss the petition, if the defendant gives sufficient cause for non appearance.

4.This Court after holding that the defendant is entitled to some indulgence allowed the appeal. Seeking review of the order on the ground that the application filed by the defendant was the fourth occasion and that therefore, the said application lacks bona fide can not be entertained. The review petition under Order XLVII Rule 1 of C.P.C has a limited scope. Unless there is an error apparent on the face of the records, the petition for review is not maintainable. It may be true that some prejudice is likely to be caused to the review petitioner, on account of entertaining the petition to set aside the ex-parte decree.

5.One of the grievances is that the appellant/defendant has successfully dragged on the proceedings for a long number of years. The suit was filed in the year 2011. In such circumstances, the learned I Additional District Judge, Tiruchirapalli, is directed to expedite the trial and dispose of the suit in O.S.No.62 of 2011, as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

6.With the above direction, this Review Application is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To
The First Additional District Judge,
Tiruchirappalli.

+1 CC to M/s.K.S. VAMSRIDHAR, Advocate (SR-15375[F] dated
31/08/2020)

Rev Aplc(md) 46 of 2020
31.08.2020

AVs (CO)
TR(16.09.2020) 3P 3C