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C.M.A.No.547 of 2022 and C.R.P.No.772 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.547 of 2021 and C.M.P.No.3863 of 2022
and
C.R.P(NPD).No.772 of 2022 and C.M.P.No.3881 of

C.M.A.No.547 of 2022

Sankar Poultry Farm
Rep by Proprietor R.Shankar
Maniyarampudhur

... Appellant

VS.

Kandaiyan Feeds
Rep by its Administrative Director,
Jeganathan

... Respondent

C.R.P.(NPD) No.772 of 2022

Sankar Poultry Farm
Rep by Proprietor R.Shankar
Maniyarampudhur

... Petitioner

VS.

Kandaiyan Feeds
Rep by its Administrative Director,
Jeganathan

... Respondent



C.M.A.No.547 of 2022 and C.R.P.No.772 of 2022

PRAYER in C.M.A.No.547 of 2022: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(d) of C.P.C against the fair and decretal order dated 11.02.2020 made in I.A.No.2 of 2019 in O.S.No.47 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

PRAYER in C.R.P.(NPD) No.772 of 2022: Civil Miscellaneous Appeal filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.02.2020 made in I.A.No.1 of 2019 in O.S.No.47 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

For Appellant/Petitioner : Mr.Sherish
for Mr.N.Manoharan

For Respondent/Respondent: Mr.I.Abrar Md.Abdullah

COMMON JUDGMENT

Civil Revision Petition and the Civil Miscellaneous Appeal arise out of a single suit O.S.No.47 of 2018 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal.



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2. C.R.P.No.772 of 2022 is filed challenging the order dated 11.02.2020 passed in I.A.No.1 of 2019 in the above suit and C.M.A.No.547 of 2022 is filed challenging the order dated 11.02.2020 passed in I.A.No.2 of 2019.

3. I.A.No.1 of 2019 is filed by the petitioner for condoning the delay of 176 days in filing the petition to set aside the *ex-parte* decree. I.A.No.2 of 2019 is filed to set aside the *ex-parte* decree.

4. Without going into the intricate details of the case the brief facts which are essential for disposing of the revision and appeal before this Court, are set out herein below.

5. The respondent herein/plaintiff had filed a suit O.S.No.47 of 2018 on the file of the District Court, Namakkal against the appellant herein/defendant for recovery of a sum of Rs.20,94,794/-.



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6. The appellant/defendant had entered appearance in the above matter and had been taking time to file their written statement. On 27.09.2018, the suit was listed for filing of the written statement. Since the written statement was not filed, the petitioner was set *ex-parte*. Thereafter, the matter was listed on 12.10.2018 for evidence and additional proof affidavit and on 12.10.2018, the evidence had commenced in the matter. Subsequently, on 21.12.2018, an *ex-parte* decree came to be passed.

7. It is the petitioner's case that he had suffered from jaundice a few days before 27.09.2018. The petitioner would submit that he was undergoing native treatment and therefore, he was unable to contact his counsel. Thereafter, the petitioner had received a notice from the Executing Court on 08.07.2019. He became aware about the *ex-parte* decree only then. Immediately on 15.07.2019, an application to condone the delay of 176 days in filing the petition to set aside the *ex-parte* decree dated 21.12.2018 was taken out by the petitioner (I.A.No.1 of 2019). Likewise, an application to set aside the *ex-parte* decree dated 21.12.2019 was also filed.



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8. The Court below dismissed both the applications, by order dated 11.02.2020. Aggrieved by the same, the petitioner has filed C.R.P.No.772 of 2022, challenging the order in I.A.No.1 of 2019 and C.M.A.No.547 of 2022 is filed, challenging the order in I.A.No.2 of 2019.

9. Heard the learned counsel on either side and perused the materials available on record.

10. Admittedly, the petitioner has entered appearance and had been contesting the case diligently. The petitioner had not filed his written statement on 27.09.2018 and was set *ex-parte*. There is a delay between 27.09.2018 and 15.07.2019, when the petitioner had filed the impugned petitions. The petitioner has filed the written statement along with the applications. The petitioner has also given sufficient reasons for his non-appearance and non-filing of the written statement on 27.09.2018. The Trial Court ought not to have dismissed the application, especially, taking into account the fact that the petitioner/defendant has filed the written



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statement. The respondent has also not been able to rebut the reasons given by the petitioner. Therefore, interest of justice would be sub-served, if the delay is condoned and the *ex-parte* decree is set aside.

11. In the result, C.M.A.No.547 of 2022 and C.R.P.No.772 of 2022 are allowed. Considering the fact that the written statement is already on file, the learned Sessions Judge, Fast Track Mahila Court, Namakkal shall proceed to frame the issues and dispose of the suit O.S.No.47 of 2018 within a period of 3 months from the date of receipt of a copy of this order. Learned counsel on both sides shall also co-operate with the early disposal of the suit. No costs. Consequently, connected miscellaneous petitions are closed.

28.06.2022

Index : Yes

Speaking / Non Speaking

srn

To

1. The Sessions Judge, Fast Track Mahila Court, Namakkal.
2. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

srn

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