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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.290 of 2022
and
C.M.P.No.1367 of 2022

Suresh ... Petitioner

..Vs..

1.Meganathan
2.Rani
3.Dheenadhayalan
4.G.Adhikesavan ... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 03.12.2021 in I.A.No.190 of 2021 in O.S.No.115 of 2015 on the file of the Sub Court, Tambaram.

For Petitioner : Mr.P.Sesubalan Raja

For Respondents : Mr.S.Pattabiraman
for R1 and R2

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ORDER

This Civil Revision Petition has been preferred challenging the order dated 03.12.2021 made in I.A.No.190 of 2021 in O.S.No.115 of 2015 passed by the learned Subordinate Judge, Sub Court, Tambaram.

2. The revision petitioner is the plaintiff in the suit. The suit has been filed for the reliefs of declaration and recovery of possession. During the pendency of the said suit, the petitioner/plaintiff filed a petition to appoint an Advocate Commissioner. The Advocate Commissioner was appointed and he also visited the suit schedule properties and filed his report. The petitioner/plaintiff omitted to file his objections to the_Commissioner's report and after a delay of 1458 days, he filed a petition to condone the delay in filing the objections to the Commissioner's report and the same was dismissed. Aggrieved over the same, the revision petitioner has preferred this revision.

3. The learned counsel for the petitioner submitted that in the interest of justice the Court ought to have given an opportunity to the

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petitioner to file his objections by allowing the petition to condone the delay.

4.The learned counsel for the respondents 1 and 2 submitted that the respondents/defendants remained *ex parte* in the proceedings and they have filed a petition to set aside the *ex parte* decree and the same is pending.

5. It seems that the petitioner/plaintiff has filed this petition, at the stage when the matter was posted for *ex parte* evidence. It is seen from the order of the learned trial Judge that the matter in dispute does not require the appointment of Commissioner and the objections sought to be filed by the plaintiff is also not necessary. While delivering the judgment, the Court is at liberty to make observations and findings on the materials filed before it after receiving the objections to the commissioner's report by condoning the delay. Since the suit is pending, the delay to be condoned will not affect the proceedings, especially when the

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respondents are set *ex parte* and the petition to set aside the ex-parte decree is also pending. Hence, I feel that the request of the petitioner could have been viewed liberally.

6. Accordingly, this Civil Revision Petition is allowed and the order dated 03.12.2021 made in I.A.No.190 of 2021 in O.S.No.115 of 2015 passed by the learned Subordinate Judge, Sub Court, Tambaram, is hereby set aside. No Costs. Consequently, connected Miscellaneous Petition is closed.

7. The revision petitioner is directed to file his objections within a period of one week from the date of receipt of a copy of this order.

20.06.2022

Index:Yes No
Speaking Order:Yes/No
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To

1.The Subordinate Judge,
Sub Court, Tambaram.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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R.N.MANJULA, J.

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