



C.R.P(PD)No.275 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

C.R.P(PD) No.275 of 2020

and

C.M.P.No. 1426 of 2020

G.Sankar

...Petitioner

Vs.

M.Samiappan

..Respondent

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, against the fair and decreetal order, dated 13.12.2019 made in I.A.No.1 of 2019 in O.S.No.19 of 2019 on the file of the Additional District Court, Dharmapuri.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.Arun Anbumani

ORDER

The Civil Revision Petition is filed by the defendant in O.S.No.19 of 2019 against an order, dismissing the application filed to set aside an exparte decree.



C.R.P(PD)No.275 of 2020

2. The suit was filed for specific performance by the respondent/plaintiff in O.S. No.19 of 2019 on the file of the Additional District and sessions Court, Dharmapuri. While the suit was posted for filing written statement, the defendant did not enter appearance and hence an exparte decree was passed on 13.08.2019. Thereafter the Interlocutory application was filed in I.A.No.1 of 2019 seeking to set aside the exparte decree. The said application was dismissed by the Trial Court. According to the defendant, he was out of station when the case was listed on 13.08.2019 and hence, he could not appear before the Court on the said date.

3. The trial Court upon consideration of the reasons assigned in the affidavit filed in support of the application, faulted the petitioner/defendant stating that on receiving summon, vakalat has been filed on behalf of the defendant on 26.03.2019. Thereafter, the petitioner got adjournment on 04.07.2019 and that he was given a final opportunity to file the written statement on 13.08.2019. Though the defendant was given four months time, he has not filed the written statement hence, the learned trial Judge passed the exparte decree. On the said conclusion, the trial Court



dismissed the application.

WEB COPY

4. I have heard Mr.C.Prabakaran, learned counsel for the petitioner and Mr. Arun Anbumani, learned counsel for the respondent .

5. Mr. C. Prabakaran, learned counsel for the petitioner would contend that the trial Court was not right in dismissing the application seeking to set aside the exparte decree. He would further submit that the application was filed within the prescribed time i.e., the very next date of hearing of the suit. There is no delay in filing the application to set aside the exparte decree. Hence, he prayed for allowing this Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondent would submit that the reasons assigned are false and the trial Court has given two opportunities to file written statement. Hence, the trial Court was right in rejecting the petition. The learned counsel for the respondent would further submit that the suit is being directed to be disposed of within a time frame fixed by this Court.



C.R.P(PD)No.275 of 2020

7. Considering the nature of the suit and the nature of the defence

taken, I am of the opinion that the petitioner should be given a chance to defend the litigation. Though the petitioner had given a reason for his absence on the hearing date that he is out of station, the petition to set aside the exparte decree as well as the written statement were filed well within time.

8. In view of the above, this Civil Revision petition is allowed.

The order of the trial Court made in I.A.No.1 of 2019 dated 13.12.2019 is set aside. The exparte decree in the suit dated 13.08.2019 is also set aside. The suit in O.S.No.19 of 2019 is restored to file. The trial Court namely Additional District Court, Dharmapuri is directed to proceed with the trial and dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2022

vum



C.R.P(PD)No.275 of 2020

To:

The Additional District Court, Dharmapuri.

WEB COPY



WEB COPY



C.R.P(PD)No.275 of 2020

S. KANNAMMAL, J.
vum

C.R.P(PD)No. 275 of 2020
and C.M.P.No. 1426 of 2020

06.06.2022