



C.R.P.(PD)No.2028 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD)No.2028 of 2022

and

C.M.P.No.10383 of 2022

Irfan Razak Family Trust,
Office No.21/22-3, Craig Park Layout,
Off Mahatma Gandhi Road,
Bangalore 560 001.

... Petitioner

..Vs..

1.Asmat-E-Jamia Simonis
2.Sameena Simons
3.Ameens Simons
4.Sabira Khatoon
5.Saleem Simons

... Respondents

Prayer :- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.1 of 2022 in O.S.No.25 of 2019 dated 22.04.2022 passed by the learned District Court of the Nilgiris at Udhagamandalam and allow this Civil Revision Petition.

For Petitioner : Mr.M.Rajasekar

ORDER

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This Civil Revision Petition has been preferred challenging the fair and decretal order dated 22.04.2022 passed in I.A.No.1 of 2022 in O.S.No.25 of 2019 by the learned District Judge, District Court, Nilgiris at Udthagamandalam.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The revision petitioner is the plaintiff, who has filed a suit in O.S.No.25 of 2019 against the respondents/defendants for specific performance. During the pendency of the suit, the defendants 2 to 5 remained absent and hence they were set *ex parte*. Subsequently, they filed an application under Order IX Rule 7 C.P.C to set aside the *ex parte* order and the said application was allowed. Aggrieved over that, the plaintiff has preferred this revision petition.

4. The learned counsel for the revision petitioner submitted that the defendants 2 to 5 were set *ex parte* in the suit on different dates ; however, they have chosen to file a single application and the same was



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allowed on payment of costs ; further the learned trial Judge had made an observation about the conduct of the defendants 2 to 5 that they wantonly remained absent with a view to dilate the proceedings; since the learned trial Judge has made an observation about the adverse conduct of the defendants 2 to 5, the application ought to have been dismissed; however, the learned trial Judge allowed the application which is contrary to his observation and that the order should be set aside.

5. It is true that the defendants 2 to 5 were set *ex parte* on different dates and it would have been well, had they filed separate application to set aside the *ex parte* order. The learned trial Judge had rightly observed that the defendants 2 to 5, who suffered *ex parte* order, were watching the proceedings and wantonly remained absent. In order to make good the loss suffered by the revision petitioner, due to the hardship caused by the respondents, the application was allowed on payment of costs of Rs.5,000/-. The order of the learned District Judge, would show that he had the substantial justice in his mind for setting aside the *ex parte* order by allowing the defendants 2 to 5 also to participate in the trial and



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dispose the suit on merits despite their conduct is not satisfactory.

6. Since the suit is still pending for trial and the 5th respondent herein/first defendant alone is contesting the suit as of now, if the benefit to contest the suit is extended to the defendants 2 to 5 also that will serve the interest of the plaintiff also for getting the suit disposed on merits. Hence, I find no reason to interfere with the findings of the learned District Judge, District Court, Nilgiris at Udhagamandalam on mere technicalities.

7. Therefore, this Civil Revision Petition is dismissed and the fair and decretal order dated 22.04.2022 passed in I.A.No.1 of 2022 in O.S.No.25 of 2019 by the learned District Judge, District Court, Nilgiris at Udhagamandalam is hereby confirmed. No costs. Consequently connected miscellaneous petition is closed.

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Speaking Order:Yes/No
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To

The District Judge,
District Court,
Nilgiris at Udhagamandalam.



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R.N.MANJULA, J.

ms

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