



C.R.P.No.2737 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.2737 of 2022
and C.M.P.No.14341 of 2022

V.Durairaj

.. Petitioner

Vs.

M.Lakshmanan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleased to set aside the Docketing order dated 16.08.2022 made in E.P.No.5 of 2019 in O.S.No.84 of 2010 on the file of first Additional District Munsif, Kallakurichi.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Krishnasamy
Caveator for sole respondent.

ORDER

The Civil Revision Petition is filed challenging the order passed in E.A.No.65 of 2021 seeking to set aside the exparte order passed against the petitioner on 20.10.2021 in E.P.No.5 of 2019.



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2. An ex parte decree for recovery of possession was sought to be executed by the respondent in E.P.No. 5 of 2019. In the execution proceedings, the revision petitioner was set exparte on 20.10.2021. Hence, he filed E.A. to set aside the ex parte order and the said Execution Application came to be dismissed by the Court below. Aggrieved by the same, the revision petitioner is before this Court.

3. In the affidavit filed in support of this petition to set aside the ex parte order, the revision petitioner has stated that on 20.10.2021, the son-in-law of the revision petitioner passed away and hence, he could not file his counter in the EP and therefore, he was set exparte.

4. The revision is opposed by the respondent by filing a counter, wherein, the respondent, by pointing out the long history of the case, submitted that the revision petitioner is in the habit of dragging the proceedings by remaining exparte. However, the averment stated in the revision petitioner's affidavit that his son-in-law died at the relevant point of time, which resulted in his non



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appearance was not specifically disputed.

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5. The learned counsel for the petitioner also brought to the notice of this Court that to set aside the said exparte decree passed in O.S.No.84 of 2010, he filed I.A.No.1148 of 2018 and the same came to be dismissed on 11.12.2018. Challenging the said order, he filed an appeal in C.M.A.No. 4 of 2019 on the file of the learned Subordinate Court, Ulundurpettai and the same is pending. He further submitted that the Appellate Court, in I.A.No. 8 of 2019 in C.M.A.No.4 of 2019, granted an order of stay of further proceedings in E.P.No.5 of 2019 on 22.09.2022.

6. In the circumstances, having satisfied with the reason given by the revision petitioner in his affidavit filed in support of his petition to set aside the ex parte decree passed in E.P.No.5 of 2019, this Court is inclined to interfere with the order passed by the Court below.

7. In view of the above, this Civil Revision Petition is allowed by setting aside the order dated 16.08.2022 passed in E.A.No. 65 of 2021 in E.P.No.5 of



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2019 on the file of I Additional District Munsif Kallakurichi.

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8. The learned counsel for the respondent requested that a direction may be issued to the learned Subordinate Judge, Ulundurpettai, to dispose of C.M.A.No. 4 of 2019 preferred by the revision petitioner challenging the order dismissing the petition to set aside the ex parte decree passed in O.S.No. 84 of 2010.

9. Taking into consideration that the Civil Miscellaneous Appeal is of the year 2019, this Court is inclined to issue a direction to the learned Subordinate Judge, Ulundurpettai to dispose of C.M.A.No. 4 of 2019 within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. The learned counsel for the revision petitioner further submitted another C.M.A.No. 3 of 2019 is also pending before the Subordinate Court, Ulundurpettai, which arises out of suit for bare injunction filed by him in O.S.No.83 of 2010 on the file of the District Munsif, Kallakurichi. Since, C.M.A.No.3 of 2019 is also between the same parties and also in respect of the



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very same subject matter of the suit, the learned Subordinate Judge,

Ulundurpettai is directed to dispose of C.M.A.No. 3 of 2019 also within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. With these directions, this Civil Revision Petition stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2022

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Index: Yes/ No

Internet: Yes/No

Speaking Order / Non-Speaking Order

To

1. The I Additional District Munsif, Kallakurichi.
2. The Subordinate Court, Ulundurpettai.



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S.SOUNTHAR, J.

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