



WEB COPY



A.No.4207 of 2021

in

C.S.No.568 of 2009

V.BHAVANI SUBBAROYAN, J.

This application has been filed to set aside the order dated 10.08.2021 passed in A.No.519 of 2020 in C.S No.568 of 2009 and consequently restore the application in A.No.519 of 2020 in C.S No.568 of 2009.

2. The learned counsel for the applicant/2nd defendant submitted that the present suit has been listed without printing his name and therefore, he was unable to appear before this Court on 17.03.2017 and hence, the 2nd defendant was set exparte and an exparte decree was passed on the same day. Thereafter, he filed an application to set aside the exparte decree in A.No.519 of 2020 and the same was allowed by this Court on 14.08.2020. Whiles, the said application was again listed before this Court and the order dated 14.08.2020 has been recalled by order dated 05.07.2021 for the reason that the legal representative / Assignee of the deceased plaintiff had not been brought on record in A.No.519 of 2020. Thereafter, he came to know that the said application was listed before this Court and the same was dismissed for default by an order dated 10.08.2021 for the reason that no steps have been taken to bring legal representative on record. The non-appearance of the applicant is neither willful nor wanton and only for the reason that his counsel name was not printed in the cause list, he was unable to appear before this Court. Hence, he prays to allow this application.



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3. The learned counsel for the 1st respondent/plaintiff has raised objection to allow this petition.

4. Considering the facts and circumstances of the case and in the interest of justice, this Court is inclined to allow this petition by imposing cost.

5. Accordingly, this application is allowed on payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the Legal Aid Services Authority, Chennai on or before 25.02.2022, failing which this application shall stand automatically dismissed.

6. List the matter for filing draft issues on 28.02.2022.

09.02.2022

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