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Rev.Appl.No.88 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2023

PRONOUNCED ON : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Review Application No.88 of 2023
and C.M.P.No.9437 of 2023
in C.R.P.(NPD).No.1513 of 2016

1.Murugesan

2.Megala

... Review Petitioners

VS

Pethan

... Respondent

Prayer: Review Application is filed under Order XL VII Rule 1 read with 114 of C.P.C., praying to review order dated 06.06.2022 passed by this Court in C.R.P.(NPD).No.1513 of 2016.

For Review Petitioners : Mr.Shangar Murali

For Respondent : Mr.T.L.Thirumalaisamy



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ORDER

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2. The main revision was filed by the respondent/10th defendant in the suit challenging the dismissal of his petition to condone the delay of 51 days in seeking to set aside the *exparte* decree passed against him.

3. One of the main contention raised by the respondent in support of his case was that when suit was filed he was not arrayed as one of the defendants. Subsequently, he was impleaded as 10th defendant by way of an impleading petition. After his impleadment as 10th defendant, the amended copies of the plaint was not served on him as mandated by Order 1 Rule 10 (4) and (5) of Code of Civil Procedure. The said averment was made by the respondent in his affidavit filed in support of his petition to condone the delay of 51 days in seeking to set aside the *exparte* decree. The specific averment



made by the respondent to that effect was not at all denied by the review applicants herein in their counter affidavit filed in the said condone delay petition.

4. Taking into consideration, the failure of the applicants herein to controvert the averment of the respondent that he was not served with amended copies of the plaint, this Court having regard to the non-compliance of procedure contemplated under Order 1 Rule 10 (4) and (5) of Code of Civil Procedure inclined to condone the delay and allow the revision petition on condition the petitioner depositing a sum of Rs.2,000/- before the Court below.

5. The applicants herein failed to deny the specific averment made by the respondent with regard to non-compliance of the Order 1 Rule 10 (4) and (5) of Code of Civil Procedure in their counter affidavit filed before the Court below. Even before this Court in revisional proceedings inspite of service of notice, applicants failed to appear and putforth their case, now in review application, the applicants raised a new plea that along with petition to set



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aside the *ex parte* decree passed against them, the respondent filed his written statement and consequently, the amended plaint should have been served on him.

6. The learned counsel appearing for the review applicants by taking this Court to the written statement filed by the respondent along with his petition to set aside *ex parte* decree submitted that without copy of the amended plaint, the respondent could not have filed the written statement.

7. The learned counsel appearing for the respondent by taking this Court to the counter affidavit filed in this revision submitted that at the time of filing the petition to set aside the *ex parte* decree, the respondent's counsel made a request to the learned counsel for the applicants before the Lower Court and got the copy of amended plaint during the 2nd week of October – 2012 and filed written statement along with petition to set aside the *ex parte* decree on 16.10.2012. The learned counsel also by taking this Court to the B-Diary entry in original suit, submitted that after impleadment of respondent, necessary amendment was carried out on 19.03.2012 and Court below



without ordering summons and service of amended plaint copy to the 10th defendant, straight away posted the matter for filing the written statement and subsequently, he was set *exparte*. Therefore, it is the submission of the learned counsel perusal of B-Diary entry in O.S.No.154 of 2010 would clearly establish that service of suit summons and amended plaint copy was not at all ordered by the Court below after respondent's impleadment as 10th defendant.

8. It is settled law that the review of an order can be undertaken only on limited grounds namely error apparent on the face of record or discovery of any new and important matter or evidence, which after exercise of due diligence by the party applying for review, was not within his knowledge.

9. In the case on hand, the applicant herein, who filed a counter affidavit to the petition filed by the respondent to set aside the ex-parte decree before the Court below, in his counter affidavit failed to deny the specific averments of the respondent that he was not served with suit summons along with amended copies of the plaint. The fact that the respondent filed written statement along with his petition to set aside the *exparte* decree was very well



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within the knowledge of the applicants even earlier, however, they failed to appear before this Court when the revision was taken up for hearing and bring the said fact to the notice of this Court. Therefore, it is not a case where applicants found any new or important matter or evidence, which was not within their knowledge at the time of hearing, even after exercise of due diligence. The fact that the respondent filed written statement along with his petition to set aside *exparte* decree was very well within the knowledge of the applicant when revision was taken up for hearing. For the reasons best known to them, the applicants failed to appear before this Court and inform the Court about the said fact. Therefore, this Court by taking into consideration the counter filed by the applicants before the Court below, wherein the specific averment of the respondent that he was not served with amended plaint copies was not denied, proceeded to accept the said averments and pass orders in favour of the respondent. Hence, the applicants have not made out any case for exercise of review jurisdiction under Order XL VII Rule 1 of Code of Civil Procedure.



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10. Further, the B-Diary extract in the main suit produced by the respondent would show that after impleadment of the respondent, the Court below has not ordered the service of summons with amended copies of the plaint to the newly added 10th defendant namely, the respondent herein.

11. In such circumstances, the order passed by this Court on the finding that there was no compliance of the Order 1 Rule 10 (4) and (5) of Code of Civil Procedure appears to be just and proper and the applicants have not made out a case for review of the same.

12. Accordingly, the Review Application is dismissed. Consequently, the connected civil miscellaneous petition is closed.

26.07.2023

Index : Yes / No
NCC : Yes / No
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S.SOUNTHAR, J.

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Pre-delivery order made in
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