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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.377 of 2022

and

C.M.P.No.1940 of 2022

Young Men's Christian Association,
represented by its General Secretary,
No.223, N.S.C. Bose Road,
Chennai 600 001.

... Petitioner

Vs.

1.A.John

2.G.Jacob Appadurai

3.R.C.Samuel Swamikkam

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 Civil Procedure Code, to set aside the order and decretal order 1st November 2021, of the IV Additional Judge, in charge of III Additional City Civil Court, Chennai passed in I.A.No.1 of 2021 in O.S.No.7172 of 2010 and render justice.

For Petitioner

: Mr.V.R.Thangavelu

For R1

: Mr.S.Kannan



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C.R.P.No.377 of



For R2 : Vacated
For R3 : No Such Person

ORDER

Challenging the impugned order dated 01.11.2021 of the IV Additional Judge, in charge of III Additional City Civil Court, Chennai passed in I.A.No.1 of 2021 in O.S.No.7172 of 2010, the petitioner filed the present Civil Revision Petition.

2. The learned counsel for the petitioner states that the petitioner is a renowned Institution running for more than hundred years. Due to lack of communication, the proceedings has not been followed by them. Therefore, there was a deliberate delay in filing the Interlocutory Application. It is further stated that before the Trial Court the 1st respondent filed a Suit for recovery of damages caused due to the three defendants therein. All the three defendants in the Suit had appeared through their counsel. However, they have failed to contest the case and all the three defendants remained exparte as there was no representation on the side of the defendants. Therefore, the Trial Court passed an exparte decree on 27.07.2017. Hence, the 1st defendant



/ petitioner herein filed an Interlocutory Application in I.A.No.1 of 2021 to condone the delay of 1489 days in filing the petition to set aside the exparte decree dated 27.07.2017 passed in O.S.No.7172 of 2010.

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3. The learned counsel for the petitioner further states that due to change of vakalat given by a new counsel and that has been recorded by the Trial Court on 18.02.2016, they were unable to follow the proceedings. Thereafter, the case was adjourned several times and finally a decree was passed in O.S.No.7172 of 2010. Even while passing the decree the Trial Court has erroneously concluded that the present counsel for the petitioner was the counsel for the 1st defendant, when an exparte decree was passed, but the fact is that the present counsel had given change of vakalat. Thereafter, the petitioner filed an Interlocutory Application in I.A.No.1 of 2021 stating the facts occurred. However, the Trial Court disbelieved the case of the petitioner and found that the allegations made in the affidavit filed in support of the condone delay petition is incorrect and dismissed the Interlocutory Application. Hence, the petitioner is constrained to move the present Civil Revision Petition.



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4. The learned counsel appearing on behalf of the 1st respondent objected the contentions made on behalf of the petitioner and submitted that based on the decree passed in O.S.No.7172 of 2010, the plaintiff therein filed E.P.No.1215 of 2020. When the petitioner had received the notice from the Executing Court, has filed an Interlocutory Application in I.A.No.1 of 2021 to condone the delay of 1489 days in filing the application for setting aside the exparte decree. It is further contended that to drag on the proceedings, the petitioner had purposely filed the Interlocutory Application. In spite of several adjournments and opportunities given to the petitioner he had failed to contest the case. Therefore, the reason assigned to condone to the delay is incorrect and the Trial Court has rightly dismissed the application. Thus, the present Civil Revision Petition is liable to be dismissed.

5. Considering the submissions made on behalf of the respective counsels appearing on behalf of the parties, this Court is of the considered opinion that the petitioner filed an Interlocutory Application to condone the delay in filing the petition to set aside the exparte decree dated 27.07.2017 on the ground that the present counsel for the petitioner had given change of



vakalat and a new counsel was engaged to defend the case. However, they were set exparte and there was no intimation about the exparte decree to the petitioner till the time, they received notice on 14.09.2021 in the Execution Petition filed on the basis of exparte decree. It is stated that due to lack of communication between the earlier counsel and the petitioner, they were not able to follow the proceedings.

6. Under these circumstances, this Court is of the view that the litigant ought not to have suffered due to lethargic attitude of their counsel and if an opportunity is not given to them, then their valuable right to defend the case will be defeated. Moreover, E.P also filed after 6 years from exparte decree. Therefore, due to the pendency of the proceedings, this Court is inclined to set aside the impugned order passed by the IV Additional Judge, in charge of III Additional City Civil Court, Chennai in I.A.No.1 of 2021 in O.S.No.7172 of 2010.

7. Thus, the Civil Revision Petition stands allowed with a condition to the petitioner to deposit a sum of Rs.2,00,000/- apart from that another sum of Rs.25,000/- is ordered to be paid as cost to respondent within two (2)



weeks and the that amount (2K) is ordered to be deposited within a period of two (2) weeks from the date of receipt of a copy of this order. On such deposit of the amount, the application filed by the revision petitioner is allowed and within 3 months the trial judge is directed to complete the proceedings of the trial. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

Jeni

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The IV Additional Judge,
in charge of III Additional City Civil Court,
Chennai.



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C.R.P.No.377 of



T.V.THAMILSELVI, J.

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C.R.P.No.377 of 2022

28.11.2023