



WEB COPY

A.No.3202 of 2023 in
T.O.S No.37 of 2018



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A.A.NAKKIRAN, J.

This application has been filed by the applicant/defendant to set aside the exparte order dated 09.09.2022 passed in T.O.S No.37 of 2018.

2. Heard both sides.

3.The learned counsel for the applicant/defendant submitted that on 09.09.2022, when the suit was posted for filing of written statement by the defendant, the applicant/defendant was not able to appear before this Court and file her written statement. Hence, she was set exparte on 09.09.2022. Due to her ill health, the applicant/defendant was unable to contact her counsel and her earlier counsel had also passed away. During the third week of March 2023 only, she came to know about the exparte order and thereafter, she immediately obtained a change of vakalat from the office of the earlier counsel and verified the status of the case through the present counsel. The non-filing of the written statement is neither willful nor wanton but for the reasons stated above. Therefore, he prays to set aside the exparte order passed against the defendant.



4. Per contra, the learned counsel for the respondent /plaintiff submitted that the reasons stated by the applicant/defendant for non-filing of written statement is not bonafide one. Despite several opportunities given to the defendant, she had not chosen to file her written statement. Moreover, no medical records have been produced by the defendant for her illness. Hence, he strongly opposed to allow this application.

5. Considering the facts and circumstances of the case, in the interest of justice, by giving one more opportunity to the defendant to contest the suit on merits, this Court is inclined to allow this application.

6. Accordingly, this application is allowed on condition that the applicant pays a sum of Rs.5,000/- (Rupees Five Thousand only) to the learned counsel for the respondent/plaintiff, on or before 18.07.2023. In the event of failure on the part of the applicant in paying the said amount within the stipulated time, this application shall stand dismissed automatically without any further reference to this Court.

7. Post on 19.07.2023.

04.07.2023

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