



WEB COPY



CRP. No. 1893 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 1893 of 2023
& CMP No. 12074 of 2023

Karunanithi

...Petitioner

Vs.

Susila

....Respondent

PRAYER : This petition filed under 115 of CPC, to set aside the fair and decreetal order dated 25.01.2023 made in I.A No. 553 of 2022 in O.S No. 41 of 2019 on the file of the Subordinate judge, Thitagudi.

For Petitioner : Mr.C.Munusamy

For Respondent : Not Appeared

ORDER

Challenging the impugned order dated 25.01.2023 made in I.A No. 553 of 2022 in O.S No. 41 of 2019 on the file of the Subordinate judge, Thitagudi, the petitioner filed this petition.



CRP. No. 1893 of 2023

2. The brief facts of the case is that the petitioner/defendant filed I.A No. 553 of 2022 in O.S No. 41 of 2019 to condone the delay of 1036 days in filing the application to set aside the exparte decree. After considering the submissions on either side the Court dismissed the said application. Challenging the same the petitioner filed this petition.

3. The learned counsel for the petitioner submits that the court below failed to considering the fact that the petitioner herein suffered from jaundice and bedridden. Taking advantage of the pathetic situation of the petitioner, the respondent has obtained exparte decree but the Court below failed to consider the fact. Further the delay in filing application to set aside the exparte decree is neither wilful nor wanton and if the delay is not condoned the petitioner valuable to defend the case will be defeated. Hence he prays to allow this petition.

4. There is no representation on the side of the respondent.

5. Considering the fact of the case, if the opportunity is given to the petitioner his valuable right to defend the case will be defeated. Hence, this Court is inclined to set aside the order dated 25.01.2023 made in I.A No. 553 of 2022 in O.S No. 41 of 2019 on the file of the Subordinate judge, Thitagudi, with the condition that the petitioner shall pay a sum of Rs.



CRP. No. 1893 of 2023

5,000/- as cost to the respondent and the petitioner shall pay the above cost

within a period of three weeks from the date of receipt of a copy of this order. Accordingly, I.A No. 553 of 2022 in O.S No. 41 of 2019 is allowed. Further, order passed by the Sub Court, Thitagudi, in E.P No. 23 of 2020 is stayed until payment of cost.

6. In result, this petition is disposed of. Consequentially connected miscellaneous petition is closed.

19.10.2023

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CRP. No. 1893 of 2023

T.V.THAMILSELVI,J.

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To

1. The Subordinate judge, Thitagudi.

CRP No. 1893 of 2023
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