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CRP.No. 1570 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1570 of 2020

and

CMP.No. 9443 of 2020

K.C.Sathish Kumar

.. Petitioner

Versus

M.S.Raja

.. Respondent

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 19.03.2020, in I.A.No.1 of 2019 in O.S.No.142 of 2016 on the file of Sessions Court at Namakkal [Fast Track Mahila Court],

For Petitioner : Mr.P. Valliappan

For Respondent : Mr.L. Muthusamy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 19.03.2020, in I.A.No.1 of 2019 in O.S.No.142 of 2016 on the file of Sessions Court at Namakkal [Fast Track Mahila Court].

2. Heard both side and perused materials available on record.



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3. On perusal of the records, it reveals that the respondent/plaintiff filed the suit in O.S.No.142 of 2016 before the Sessions Court [Fast Track Mahila], Namakkal, for a preliminary decree declaring that the amount of Rs.42,32,000/- is payable by the defendant to the plaintiff and to direct the defendant to pay the said amount together with subsequent interest from the date of plaint till the date of realization. The petitioner/defendant has contested the suit by filing written statement and denying all the averments made in the plaint. After perusing the relevant records, the Court below passed ex-parte judgment and decree on 21.01.2019. At that time, the petitioner/defendant filed IA.No.1 of 2019 under Section 5 of the Limitation Act, seeking to condone the delay of 234 days in filing the petition under Order 9 Rule 13 of CPC., seeking to set aside the ex-parte decree passed on 21.01.2019. After analyzing the records, the Court below dismissed the said application by order dated 19.03.2020. Aggrieved by the said order, the petitioner has filed this Civil Revision Petition.

4. The contention of the revision petitioner/defendant is that the



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petitioner/defendant contested the suit by filing written statement and denying all the averments made in the plaint. After filing written statement, the petitioner was affected by Jaundice and was taking country medicine treatment. After recovery from illness, the petitioner came to know that he was set ex-parte and ex-parte decree was passed on 21.01.2019 by the Court below. Due to his illness, he was not able to file an application in respect of set aside the ex-parte decree in time. Hence, there was a delay of 234 days in filing the set aside the ex-parte decree. The aforesaid non-appearance of the petitioner was neither willful nor wanton. Therefore, he prays to allow the above Revision.

5. Per contra, the contention of the respondent/plaintiff is that even notice was served to the petitioner, he was not present before the Court below, called absent and ex-parte decree was passed on 21.01.2019. The reason was stated by the petitioner is that he was suffering from Jaundice and was taking country medicine treatment and therefore, he could not appear before the Court below. No documents have been produced by the petitioner and hence, he prays the above Civil Revision Petition is liable to be dismissed.



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6. On a perusal of the impugned order, it reveals that the plaintiff himself examined as PW1 and proof affidavit has also been filed. Ex.A1 and Ex.A2 were marked. Plaintiff's side evidence was closed. The Court below dismissed the application on the ground that the petitioner has not produced any documentary proof to show that the petitioner was suffering from Jaundice and dismissed the application by order dated 19.03.2020.

7. On a thorough reading of the averments set out in the affidavit filed in support of the petition, this Court finds that the petitioner was suffering Jaundice for which, he has taken country medicine treatment. There would not be any record for taking country medicine treatment. To disprove the version of the petitioner, the respondent has not produced any evidence.

8. Considering the facts and circumstances of the case, and also the nature of treatment, the petitioner has taken, this Court is of the view that the petitioner has shown sufficient cause for the delay in filing the application to set aside the ex-parte decree. If the delay is condoned, no



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prejudice would be caused to the respondent/plaintiff. On the other hand, the delay is not condoned, the petitioner would be put to irreparable loss and hardship, as the suit is of the year 2016, one for partition.

9. Accordingly, the Civil Revision Petition is allowed. The order of the trial Court dated 19.03.2020 made in I.A.No.1 of 2019 in O.S.No.142 of 2016 is set aside. Further, the revision petitioner/defendant is directed to pay costs of **Rs.10,000/- (Rupees Ten Thousand Only)** to the respondent/plaintiff within a period of one week from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2023

Speaking order / Non speaking order

Neutral citation : Yes/No

msm

To

1. The Sessions Court, Namakkal, [Fast Track Mahila Court].
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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