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C.R.P.No.3661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

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

C.R.P.No.3661 of 2023

Umamathini,
Rep.by her Power Agent
Natarajan

... Petitioner

-Vs-

1.K.Thirunarayanan

2.T.Ravichandran

M.Sundaravel (Deceased)

3. S.Muthamizh Selvan

4.Santhakumari

5.S.Haribaskar

6.R.Sarathkumar

7.R.Deepika

8.K.Chinnaiyan

9.M.Mani

10.P.Venkatesan

C.Sattaiyappan (deceased)

11.V.Ramanathan

12.K.Ranganathan

13.N.Dhathinamoorthy



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- 14.S.Venu
- 15.T.Kathirvel
- 16.T.Ulaganathan
- 17.T.Purushothaman
- 18.P.Panchanathan
- 19.N.Thangarasu
- 20.N.Singaru
- 21.T.Vishwanathan
- 22.V.Kolanchi
- 23.R.Ramasamy
- 24.V.Rajangam
- 25.S.Jagadambal

S.Selvam (Deceased)

- 26.S.Latha
- 27.S.Dinesh Kumar (Minor)
- 28.S.Abinaya (Minor)

Respondents 27 and 28 are rep. by
natural guardian of mother S.Latha,
26th respondent.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 25.11.2022 passed in I.A. No.1 of 2019 in I.A.No.367 of 2017 in O.S. No.8 of 2017 on the file of the Subordinate Court, Jayamkondam and allow the civil revision petition.

For Petitioner : Ms.Usha Ramman



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ORDER

Challenging the impugned order passed in I.A.No.1 of 2019 in I.A.No.367 of 2017 in O.S.No.08 of 2017, on the file of Sub-Judge, Jayankondam, the plaintiff preferred this Civil Revision Petition.

2. Since the relief sought challenging the order of trial judge, notice to the respondents is dispensed with.

3. The learned counsel for Revision Petitioner would submit that before the trial court, he filed a suit for partition in O.S.No.8 of 2017 against the defendants. The written statement was also filed and when the suit was ripe for trial, he was not able to appear before the trial court. Hence, the suit was dismissed for default on 21.11.2017. Immediately, he filed the restoration application in I.A.No.367 of 2017 and in that application, note of hearings was not filed. Therefore, on the subsequent hearings, the said application was also dismissed. Hence, to restore the said application, he filed I.A.No.1 of 2019 stating that his absence was not willful on that day and only due to lack of communication, he was not able to file notes of hearings. Hence, he prayed to set aside the dismissal order passed in I.A.No.367 of 2017. That application was allowed by the trial



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judge directing the plaintiff to pay the cost of Rs.500/- payable to the defendants 4 to 8, totally a sum of Rs.2000/- within five days from the date of that order. But, the learned counsel, who appeared for the plaintiff was not able to inform the same to the plaintiff within time. So, he was not able to pay the cost within the stipulated time, however, he is ready to pay the cost in time. So, due to non-compliance of the order, that application was dismissed. Challenging the same, the present Civil Revision Petition has been filed.

4. The learned counsel for Revision Petitioner would submit that he is always ready to proceed with the suit and due to illness, he was not able to appear before the trial court. However, in the restoration application the defendants also not raised objection, inspite of that, the trial judge dismissed the said application for non-payment of cost, which needs to be set aside.

5. Records perused. On perusal of records, it reveals that in the Interlocutory Application in I.A.No.367 of 2017, the defendants not raised objections to restore the suit, however, the trial judge imposed the condition directing the plaintiff to pay the cost within five days and within that period, he was unable to pay the cost. As the trial judge not even



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granted two weeks time, the revision petitioner is not able to comply the condition in time. So, if the opportunity is not given to the plaintiff to contest the case before the trial court, his valuable right to defend the case will be defeated. Hence, the order passed by the trial judge is liable to set aside. Accordingly, this Civil Revision Petition is allowed and the application filed in I.A.No.1 of 2019 is ordered to be taken on file. The Revision Petitioner is directed to pay the said cost within a period of two weeks from the date of receipt of copy of this order and on such payment, the trial judge is directed to proceed with the suit in O.S.No.8 of 2017 as per manner known to law. No costs.

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Index : Yes/No

Speaking Order : Yes/No

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To

The Subordinate Judge, Jayamkondam.



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T.V.THAMILSELVI, J.

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