



CRP.No. 3319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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Syrus Mazda

... Petitioner

Versus

Asad Cassim

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the docket order dated 27.04.2022 in I.A.No. 1 of 2022 in I.A.No. 1 of 2021 in O.S.No. 4917 of 2015 on the file of the XIV Assistant Judge, City Civil Court, Chennai, and consequently, to restore the suit in O.S.No. 4917 of 2015 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

For petitioner : Mr.K.F. Manavalan

ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order dated 27.04.2022 passed in I.A.No. 1 of 2022 in I.A.No. 1 of



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2021 in O.S.No. 4917 of 2015 on the file of the XIV Assistant Judge, City Civil Court, Chennai, and consequently, to restore the suit.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. On a perusal of the records, it is seen that the petitioner/plaintiff has filed a suit in O.S.No. 4917 of 2015 before the XIV Assistant City Civil Court, Chennai, for recovery of money against the respondent/defendant. The defendant has contested the suit by filing written statement, denying all the averments made in the plaint. During the pendency of the suit proceedings, the petitioner/plaintiff filed IA.No. 1 of 2021 seeking to set aside the ex-parte judgment and decree dated 01.11.2016 in O.S.No. 4917 of 2015 and restore the suit on file. After perusing the records, the Court below allowed the said application by order dated 11.04.2022 (i) on condition that the petitioner shall pay costs of Rs.1,000/- to the respondent on or before 26.04.2022 (ii) the petitioner shall let in evidence on 27.04.2022 for compliance. Subsequently, the petitioner has not complied with the conditional order passed by the Court below and hence, the application was



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dismissed by order dated 27.04.2022. Aggrieved by the same, the petitioner/plaintiff has come forward with the present Civil Revision Petition.

4. It is seen that the Court below imposed two conditions, namely, (i) that the petitioner shall pay costs of Rs.1,000/- (ii) to proceed with the trial on 27.04.2022. The first condition has been complied with on 21.04.2022 itself and the second condition was not complied with on medical grounds. The petitioner filed a petition seeking adjournment on medical grounds supported by a medical certificate from a reputed hospital which was not even considered, let alone in its proper perspective. It is submitted that the impugned order is perverse for not taking a relevant circumstance into consideration. Further, the petitioner filed I.A.No. 1 of 2021 in the suit seeking to set aside the ex-parte decree within the stipulated time of 30 days and in the normal course, it ought to have been allowed without any condition. Even thereafter, despite substantial compliance with the conditional order dated 11.04.2022 in I.A.No. 1 of 2021 in O.S.No.4917 of 2015 and adducing bona-fide reasons on medical grounds, supported by documentary evidence for the petitioner's non appearance on 27.04.2022, the restoration petition was dismissed. The Court below erred in overlooking the



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fact that even on merits, the petitioner seeking adjournment ought to have been allowed when the first of the two conditions imposed had been complied with in full and the 2nd condition became impossible of performance on medical grounds. Further, the Court below in not taking liberal view in the interests of justice and grant an adjournment on medical grounds, since the intervening summer holidays, should have granted sufficient time for the petitioner to recoup medically and proceed with the trial. Hence, this Court is of the view that it is necessary in the interest of justice, the petitioner ought to have been afforded an opportunity to prosecute the suit. No prejudice would be caused to the respondent, if this petition is allowed. Therefore, this Court is inclined to set aside the findings of the Court below and the CRP is liable to be allowed.

5. Accordingly, the Civil Revision Petition is allowed. The impugned order of the Court below dated 27.04.2022 passed in I.A.No. 1 of 2022 in I.A.No. 1 of 2021 in O.S.No. 4917 of 2015 on the file of the XIV Assistant Judge, City Civil Court, Chennai, is set aside and the suit is restored to file.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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To

1. The XIV Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J

msm

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