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CRP.No. 3001 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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S. Devan

... Petitioner

Versus

K.R.P. Rudran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 28.07.2023 passed in I.A.No. 6 of 2023 in C.A.No. 11278 of 2023 in O.S.No. 1279 of 2022 on the file of the VIII Assistant City Civil Court, Chennai.

For petitioner : Mr. Y. Kajanavas

ORDER

This Revision is filed seeking to set aside the fair and decretal order dated 28.07.2023 passed in I.A.No. 6 of 2023 in C.A.No. 11278 of 2023 in O.S.No. 1279 of 2022 on the file of the VIII Assistant Judge, City Civil Court, Chennai.



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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 respondent/plaintiff filed a suit in O.S.No. 1279 of 2022 before the VIII Assistant City Civil Court, Chennai, for recovery of money against the defendants. After perusing the records, the trial Court passed judgment and decree in O.S.No. 1279 of 2022, dated 21.04.2023. Subsequently, one junior counsel M.Mythili attached in his counsel office had filed the Copy Application No.11278 of 2023 dated 25.04.2023 for issuance of certified copy of the judgment and decree passed in O.S.No.1279 of 2022, dated 21.04.2023. However, she had left his counsel office from 10.06.2023 due to her some personal work without any intimation about the copy application. Since she was take care of the above said case from the year 2022 onwards. However, on 03.07.2023, the petitioner has visited his counsel office and asking about the copy of the judgment and decree. After verification, the petitioner was shocked to inform by his counsel that the above Copy Application No. 11278 of 2023 was struck off on 12.06.2023 by the Registry for not paying the proper Stamp Duty. Thereafter, the petitioner has informed to his counsel to



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take necessary steps to restore the Copy Application No. 11278 of 2023 in I.A.No. 6 of 2023 which was dismissed by the Court below, dated 28.07.2023. Against which, the petitioner has filed the present Revision before this Court. The petitioner submits that the non-affixing the stamp on the Copy Application on 12.06.2023 is neither willful nor wanton and only to the above stated reasons. Hence, the Court below may condone the inadvertent acts of his counsel and restore the Copy Application No. 11278 of 2023 and direct the Registry to issue a certified copy of the judgment and decree passed in O.S.No. 1279 of 2022, dated 21.04.2023.

4. It is further seen that on 25.04.2023, the petitioner made a Copy Application No. 11278 of 2023. The stamp for the Copy Application was called for on 12.06.2023 and the stamp has to be affixed on 15.06.2023. Since one of the junior counsel M.Mythili attached in the petitioner's counsel office was followed the above Copy Application and she suddenly left out from the office from 10.06.2023 and hence, the stamp was not affixed on the Copy Application on 15.06.2023. Therefore, the said Copy Application was struck off by the Registry of the City Civil Court. However, on 04.07.2023 after came to the above said facts, the petitioner had filed the IA.No. 6 of



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2023 to restore the above Copy Application. However, the trial Court erroneously dismissed the IA.No. 6 of 2023 by order dated 28.07.2023 on the ground that the signature in the Copy Application was put by the said M.Mythili. Moreover, the reason for struck off the Copy Application, dated 15.06.2023 was not given on the copy application. However, the trial Court has not considered the Rule 129(2) of the Code of Civil Procedure.

“Rule 129. Notice to stamp papers:-

(2) Any application for copies struck off under the above rule, may be restored by the court on the petition supported by an affidavit preferred for the purpose. The petitioner may deposit the required copy stamps along with petition for restoration of the application for copies. If he does not do so, the required stamps should be called for in the usual course, after the application is ordered to be restored.”

5. While representing the IA.No. 6 of 2023, the petitioner attached the order passed in CRP.No. 468 of 2012 cited in 2017 (1) LW-411 and the trial Court has not considered the same and the signature found in the Copy Application was one of the counsels appearing for the petitioner in this Revision. Hence, the Court below has not considered the above and passed an order against the settled proposition of law. Therefore, this Court is



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inclined to set aside the order dated 28.07.2023 passed by the Court below.

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6. Taking into the above facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, this Court is hereby set aside the order dated 28.07.2023 passed in I.A.No. 6 of 2023 in C.A.No. 11278 of 2023 in O.S.No. 1279 of 2023 pending on the file of the VIII Assistant Judge, City Civil Court, Chennai.

7. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The VIII Assistant Judge, City Civil Court, Chennai.

2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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