



C.R.P.No.3819 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

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

C.R.P.No.3819 of 2023
and
C.M.P.No.23659 of 2023

V.Kanthamani

... Petitioner

-Vs-

T.K.Raja

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside order dated 21.07.2023 made in I.A.No.3 of 2022 in O.S.No.56 of 2022 on the file of Addl. District Munsif, Tiruchengode, Namakkal Dt.

For Petitioner

: Mr.M.Sivakumar



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ORDER

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Challenging the impugned order passed in I.A.No.3 of 2022 in O.S.No.56 of 2022 by the learned Addl. District Munsif, Tiruchengode, Namakkal District, the Revision Petitioner/defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Respondent/plaintiff filed a suit in O.S.No. 56 of 2022 seeking for the relief of declaration and injunction against the Revision Petitioner. In that suit, he appeared and engaged a counsel and subsequently, she was not able to give instructions to him, due to his age-old ailment. Hence, due to her absence, she was set exparte. To set aside the exparte decree, she filed an Interlocutory Application in I.A.No.3 of 2022, the trial judge accepted her contentions and allowed the application on payment of cost of Rs.1000/- on or before 27.07.2023. But, after passing of the said order, there was lack of communication to her from her counsel. So, she was not able to pay the cost and thereafter,



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having come to know the same, she sought extension of time. But, the trial court not inclined to extend the time and accordingly, the said application was dismissed for non-payment of cost. Aggrieved over the same, the Revision Petitioner/defendant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the defendant is aged about more than 65 years and due to lack of communication from her counsel, she was not able to pay the cost. Hence, he prayed to set aside the findings of the trial judge.

5. Admittedly, the plaintiff approached the court seeking for the relief of declaration, so fair opportunity is to be given to the defendant to prove her claim before the trial court. If opportunity is not given to her, her valuable right to defend the case will be defeated. But without considering all these legal aspects, the trial judge simply dismissed the application, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.3 of 2022 in O.S.No.56 of 2022 is set aside and to pay the cost, three weeks time is granted to the Revision Petitioner and on such



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payment, the trial judge is directed to allow the application and to proceed with the trial as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.10.2023

Index : Yes/No

Speaking Order : Yes/No

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To

The Addl. District Munsif, Tiruchengode.



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T.V.THAMILSELVI, J.

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