



C.R.P.No.4014 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

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

C.R.P.No.4014 of 2023
and
C.M.P.No.24565 of 2023

Thirumoorthy ... Petitioner
-Vs-

1.Nallasamy
2. Nandhakumar ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 15.09.2023 passed in I.A.No.7 of 2023 in O.S.No.187 of 2015 on the file of learned District Munsif Court, Perundurai.

For Petitioner : Mr.M.Manikanda Prabhu
for Mr. N.Manokaran



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ORDER

Challenging the impugned order passed in I.A.No.7 of 2023 in O.S.No.187 of 2015 passed by the learned District Munsif, Perundurai, the Revision Petitioner/1st 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 respondents/plaintiffs filed a suit in O.S.No. 187 of 2015 against the defendants 1 and 2 for the relief of declaration and permanent injunction. In that suit, the Revision Petitioner is arrayed as 1st defendant. As he was not properly communicated, he was set exparte on 28.09.2018 and he was also not aware of the subsequent proceedings. Now, recently, he came to know that the case is posted for trial. Immediately on verification, he came to know that he was set exparte in the year of 2018 itself, he filed an application in I.A.No.7 of 2023 to set aside the exparte order. That application was strongly resisted by the respondents/plaintiffs stating that knowingly well, he prolonged the



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proceedings and to drag on the proceedings, at the time of trial, he came forward with the said application, as such is not acceptable one. Considering both side submissions, the trial court held that the revision petitioner is not permitted to file such application without proper reasons and in a routine manner, after the period of 5 years, without explaining sufficient reasons, he filed the said application, thereby it was dismissed. Challenging the said findings, the Revision Petitioner/1st defendant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the exparte order was passed in the year of 2018, which was not brought to his knowledge by his counsel and on verification only, he came to know about the said fact and also during Covid-19 pandemic situation, he was suffered with illness. Hence, he was not able to follow the court proceedings. But, immediately after came to know about the exparte order, he filed the said application, but the same was not properly appreciated by the trial judge. However, he is having valid defence to prove his case. Hence, he prayed to set aside the findings of the trial judge.



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5. Records perused. On perusal of entire facts, it reveals that in the year of 2018, he was set exparte and now he filed an application to set aside the exparte order along with the written statement. Admittedly, now the case is ripe for trial and the 2nd defendant is contesting the case, but, so far, exparte decree has not been passed. Hence, no prejudice would be caused to the respondents/plaintiffs by setting aside the exparte order, since because he approached the court and filed written statement. However, if opportunity is not given to the Revision Petitioner, his valuable right to defend the case will be defeated. Furthermore, the 1st plaintiff is aged about more than 70 years. But, the trial judge failed to appreciate the said legal proposition and erroneously dismissed the application, as such 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.7 of 2023 in O.S.No.187 of 2015 is set aside on condition that the Revision Petitioner shall pay a cost of Rs.3000/- to the respondents/plaintiffs within a period of three weeks from the date of receipt of copy of this order and the said application is ordered to be allowed. The Revision Petitioner/1st defendant is directed to cooperate



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with the trial proceedings and the trial judge is directed to complete the trial and dispose the case as expeditiously as possible, since because the 1st respondent/plaintiff is aged more than 70 years. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
rpp

To

District Munsif, Perundurai.



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T.V.THAMILSELVI, J.

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