



**A.No.6513 of 2023**

**in C.S.No.365 of 2021**

**N.SATHISH KUMAR, J.**

This application has been filed to set aside the exparte order dated 15.11.2023 passed against the defendants 2, 4 and 5 in the above suit.

2. Though the exparte order has been passed taking note of the fact that the chief examination of the PW1 was examined on 15.11.2022 and adjournment has been granted at the drop of the hat of the defendants and again when the matter was posted on 23.02.2023, the defendants 2, 4 and 5 have not cross examined the witness and again the matter has been posted before this Court. Once again the matter was sent to the learned Master on 06.07.2023 and there was a direction to the defendants to complete the cross examination by 28.07.2023. However, the defendants have not cross examined the witness. Therefore, the matter is posted before this Court once again on 15.11.2023, as there was no representation, the defendants 2 and 4 to 6 were set exparte. Now, the instant application has been filed to set aside the exparte order passed as against the defendants 2,4 & 5.

3. It is the contention in the application that since, the second applicant was battling illness and confined at the bedrest, she could not contact her advocate. Hence, she seeks to allow this application.



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**N.SATHISH KUMAR, J.**

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4. The manner in which the adjournments have been granted for cross examination clearly exhibits that the trial was conducted have been done in a callous manner. In any event, considering the fact that suit itself is for recovery of amount from the legal heirs, this Court in order to give fair opportunity to the legal heirs, is inclined to set aside the exparte order. However, taking note of the conduct of the applicants in protracting the matter from 2022, this application is ordered subject to payment of cost of Rs.20,000/- to the Cancer Institute, Adyar, Chennai on or before 05.01.2024. If the cost is not paid, the application stands dismissed and if the cost is paid, Registry is directed to post this case for the learned Additional Master – I for recording evidence on 08.01.2024. Both side evidences shall be completed on or before 29.02.2024.

20.12.2023

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