



C.R.P.(MD)No.585 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 07.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.585 of 2019

and

CMP(MD)No.2895 of 2019

R.Murugan

... Petitioner/Petitioner/ 1st Defendant

Vs.

1.Manimaran

... 1st Respondent/1st Respondent / Plaintiff

2.Muthusamy

... 2nd Respondent / Petitioner / 2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.490 of 2018, in O.S.No. 182 of 2016, dated 07.02.2019, on the file of the Additional District Munsif Court, Thoothukudi, by allowing this Civil Revision Petition.

For Petitioner : Mr.Muthumalairaja

For Respondents : Mr.L.Siva for R1
: No appearance for R2



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ORDER

The instant Civil Revision Petition has been filed, against the order passed in I.A.No.490 of 2018, in O.S.No.182 of 2016, dated 07.02.2019, on the file of the Additional District Munsif Court, Thoothukudi..

2. The revision petitioner is the first defendant, the first respondent is the plaintiff, and the second respondent is the second defendant before the Court below.

3. For the sake of convenience, the parties are referred according to their litigative status before the trial Court.

4. Short facts which give rise to the instant Revision Petition, are as under:

It appears that the first respondent / plaintiff has filed a suit for declaration and for permanent injunction. When the suit was pending as against the second defendant, the plaintiff has filed a memo to exonerate the second defendant. However, the plaintiff has proceeded the case



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against the revision petitioner / first defendant. It appears that due to the absence of the revision petitioner, the suit was decreed on 29.01.2018.

However, there was a delay of 184 days in filing the application to set aside the *exparte* decree. Reasons assigned by the petitioner is that he was suffering from fever. Hence, he could not meet his counsel and that is why due to the same, his counsel could not able to defend him before the Court of law.

5. The above said reason was stoutly objected by the first respondent / plaintiff. The learned trial Judge, also disbelieving the petitioner / first defendant's contention, has dismissed the application.

6. I have given my anxious consideration to the either side submissions.

7. Here, the delay is only 184 days. However, the Court below found the lethargic attitude of the petitioner from the date of receipt of the summon in execution petition and for filing the application to set aside the *exparte* order.



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8. According to the Court below, there was a delay of 20 days, which constrains the Court to disbelieve the version of the petitioner. Though there is a delay of 20 days, in filing the application to set aside the *exparte* decree, from the date of receipt of the summons, in execution proceedings, this Court considering the nature of the suit, being one for declaration, and also upon the fact that the same has been pending before the Court of law, since 2016 and considering that there is no *exparte* decree in prior in point of time, in order to have a substantial justice to both the petitioner and the respondents, this Court is inclined to allow the petition. However, considering the hardship faced by the plaintiff, this Court would like to impose cost to them.

9. In the result the instant Civil Revision Petition stands **allowed** on condition, and thereby, the I.A.No.490 of 2018, in O.S.No.182 of 2016, dated 07.02.2019, on the file of the Additional District Munsif Court, Thoothukudi, is hereby allowed, on payment of cost of **Rs.3,000/- (Rupees Three Thousand only)** to the first respondent/ plaintiff, within four weeks from the date of receipt of the copy of the order, failing which, this revision



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petition shall stand dismissed without any further reference to this Court.

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Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No

Index :Yes/No

Ls

07.08.2023

To

1.The Additional District Munsif Court,
Thoothukudi.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

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