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C.R.P.(MD)No.1816 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.1816 of 2023

and

C.M.P(MD)No.9059 of 2023

Karuppayee : Petitioner/Respondent/Plaintiff

Vs.

Indirani : Respondent/Petitioner/Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 17.10.2022 made in I.A.No.3 of 2020 in O.S.No.708 of 2013 on the file of the II Additional Subordinate Judge, Trichy.

For Petitioner : Mr.Jegan Manohar

For Respondent : Mr.K.Kalimuthu

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.3 of 2020 in O.S.No.708 of 2013 on the file of the learned II Additional Subordinate Judge, Trichy, dated 17.10.2022, condoning the



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delay of 665 days in filing the application to set aside the ex-parte decree dated 25.01.2018.

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2. It is seen from the records that the learned II Additional Subordinate Judge, Trichy, after conducting enquiry, has passed the conditional order, directing the respondent/petitioner to pay a cost of Rs.3,500/- on or before 04.11.20223, failing which, the petition shall stand dismissed.

3. The learned counsel for the petitioner would submit that the respondent/petitioner has not complied with the order of this Court and subsequently, she has filed an application for extension of time. The learned counsel for the respondent would submit that the petitioner has refused to receive the cost alleging that they have decided to challenge the impugned order, the respondent deposited the amount before the concerned Court.

4. When the matter is taken up for hearing today, the learned counsel for the petitioner would submit that the defendants 2 to 5 entered into appearance and the second defendant was representing the minor defendants 4 and 5 and that subsequently, without filing the written



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statement, they have remained ex-parte and that the learned trial Judge has proceeded to examine the petitioner/plaintiff and passed the preliminary decree and that after the defendant was set ex-parte, no steps were taken to appoint any guardian for the minor defendants 4 and 5.

5.The learned counsel for the respondent would submit that when the minor defendants were not represented, the order of the trial Court in setting them ex-parte and proceeded to pass ex-parte decree is not legally valid and as such the order of the trial Court in condoning the delay in filing the petition for setting aside the ex-parte decree, cannot be found fault with.

6.The learned counsel for the petitioner would fairly concede that the way in which the ex-parte decree was passed against the minor defendants, is not proper, but at the same, considering the length of delay, the respondent may be directed to pay heavy cost.

7. Considering the facts and circumstances of the case and also the facts that the minor defendants were not represented earlier and the reasons assigned for the delay, the order of the learned trial Judge in



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condoning the delay, by imposing costs cannot be found fault with. But at the same time, considering the other facts and circumstances of the case and also taking note of the fact that the petitioner has already filed the final decree petition, the respondent is directed to pay a sum of Rs.5,000/- as costs to the petitioner on or before 08.11.2023. On payment of cost, taking note of the submissions of the learned counsel on either side, the trial Court is hereby directed to set aside the ex-parte decree and proceed with the trial and dispose of the suit in O.S.No.708 of 2013 within a period of three months thereafter. The parties are directed to appearing before the concerned Court on 15.11.2023.

8. With the above observation and directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The II Additional Subordinate Judge,
Trichy.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in

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and

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Dated : 13.10.2023