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C.R.P(NPD)(MD).No.2148 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.04.2023

Pronounced on : 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.2148 of 2018

and

C.M.P(MD)No.9526 of 2018

Santhanam

... Revision Petitioner

Vs.

Kamala

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order of the Additional District Munsif cum Judicial Magistrate, Manamadurai dated 31.07.2018 dismissing the I.A.No.22 of 2018 in O.S.No.196 of 2013.

For Petitioner : Mr.R.Ramadurai

For Respondent : Mr.S.Muniyandi



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ORDER

This Civil Revision Petition is filed against the order dated 31.07.2018 passed in I.A.No.22 of 2018 in O.S.No.196 of 2013 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai.

2. The learned counsel for the petitioner has submitted that the petitioner is the defendant in O.S.No.196 of 2013 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai. The respondent/plaintiff has filed the said suit for declaration and permanent injunction in respect of suit property mentioned therein. In the said suit an ex-parte decree came to be passed on 09.06.2014 and the said fact was known to the petitioner only the previous day to the filing of the petition before Trial Court. The petitioner has not received suit summon. The petitioner through his counsel verified case records and he came to know that the suit summon was served on the brother of the petitioner. Immediately, the petitioner has filed petition in I.A.No.22 of 2018 in O.S.No.196 of 2013 before the Trial Court to condone the delay of 1164 days in filing petition for setting aside the ex-parte decree. But, the Trial Court, without considering fact that the summon was not served on the petitioner, dismissed the petition.



Aggrieved by that dismissal order, the petitioner has filed this Civil Revision Petition. In support of his argument, that petitioner has filed certified copy of B.Diary to prove fact that the suit summon was not served on the petitioner. Therefore, the impugned order may be set aside.

3.The learned counsel for the respondent has raised strong objection that the delay of 1164 days is an inordinate delay and the petitioner has not explained each and every days delay. The suit notice was served on the own brother of the petitioner and hence, he evaded to receive the postal summon sent by the court. Trial Court has correctly held that notice was sufficiently served on the petitioner and hence, the impugned order is correctly passed, which need not interfered by way of this Civil Revision Petition.

4. Heard both side and perused the records.

5. It is clear that the respondent as plaintiff has filed the main suit in O.S.No.196 of 2013 on the file of the Additional District Munsif-cum-Judicial Magistrate, Manamadurai in respect of the suit property mentioned therein. Rival claim has been made over the suit property by both parties. The main suit is for declaration that the suit property is



belonged to the respondent. If so, the suit notice ought to have been served only on the petitioner, who is the defendant in the main suit.

According to the petitioner, suit summon was not directly served on him and it was served only on his brother, which is not sufficient in the eye of law. The respondent has not denied the fact that the suit notice was served on the brother of the petitioner and the same was not served directly on the petitioner. Each and every litigant has to be given sufficient opportunity to put forth his respective case for disposal of a case on merits. In the case on hand, the petitioner who is the defendant in the main suit was not given opportunity to put forth his case, but set ex-parte on the basis of service of suit notice on his brother. It could not be taken as correct principle of law. If the brother is also one of the party/defendant to the same suit, it can be taken into consideration. But, the brother of the petitioner is not a party to the suit. Therefore, the case of the petitioner has to be considered. However, the respondent placed argument that the delay is an inordinate delay. The argument of the respondent is also to be taken into consideration. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused by the respondent.



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6. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent on or before 07.07.2023, failing which this Civil Revision Petition stands dismissed automatically without any further reference to this Court. Consequently connected Miscellaneous Petition is closed.

19.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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Note: Issue Order copy on 21.06.2023

To

1.The Additional District Munsif cum Judicial Magistrate,
Manamadurai.

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



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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