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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.365 of 2023
and
C.M.P(MD)No.1776 of 2023

Darvin Suryakumar ... Petitioner

Vs.

Vinoth Gnanasambantham ... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No. 1 of 2021 in O.S.No.122 of 2019 on the file of the learned Sub Court, Periyakulam, Theni District, dated 06.10.2021.

For Petitioner : Mr.R.Shankar Ganesh
For Respondent : Mr.R.Suriyanarayanan

ORDER

The present revision petition has been filed by the defendant in the suit filed for recovery of money, challenging the order of refusal to condone the delay of 133 days in setting aside the exparte decree.

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2. According to the petitioner / defendant, he was not served with summons in the suit and he came to know about the passing of the exparte decree, only after receiving the order of attachment of salary.

3. However, learned counsel appearing for the respondent / plaintiff, submits that the trial Court has given a specific finding that the defendant has received the summons and despite having knowledge about the pendency of the suit, he has not chosen to appear either in person or through counsel. Hence, the petitioner / defendant has not approached with clean hands.

4. I have considered the submissions on either side.

5. Considering the fact that the suit is for recovery of money and the length of the delay is 133 days in setting aside the exparte decree, this Court is inclined to allow the Civil Revision Petition with a condition that the Petitioner shall deposit a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of O.S.No.122 of 2019 on the file of the Sub Court, Periyakulam, Theni District, within a period of two weeks from the date of receipt of a copy of this order. In case the aforesaid amount is

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not deposited by the petitioner / defendant, this Civil Revision Petition shall stand dismissed automatically without any further reference to this Court.

6. However, considering the fact that the suit is of the year 2019, the petitioner / defendant is directed to file written statement within a period of four weeks from the date of receipt of a copy of this order and the trial shall be completed on or before 31.12.2023.

7. In fine, this Civil Revision Petition stands allowed to that extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.02.2023

NCC : Yes / No
Index : Yes / No
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To

1.The Sub Court, Periyakulam, Theni District,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)No.365 of 2023

Dated:
23.02.2023

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