



C.M.A.No.174 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.174 of 2024

and

C.M.P.No.1715 of 2024

Kaliyappan

... Appellant

Vs.

Nagendiran

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(c) of Code of Civil Procedure, 1908 against the Order and Decree in I.A.No.1 of 2022 in O.S.No.37 of 2021, dated 15.12.2023, on the file of the II Additional District Judge, Tindivanam.

For Appellant : Mr.P.Vasanth

For Respondent Notice served,
No appearance

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellant, seeking to set aside the order and decree passed by the Court below in I.A.No.1 of 2022 in O.S.No.37 of 2021, dated 15.12.2023, on the file of



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the II Additional District Judge, Tindivanam.

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2. The appellant herein is the defendant in the Suit in O.S.No.37 of 2021 and the respondent is the plaintiff, and the said Suit was filed for specific performance. It is stated that, the trial Court, adjourned the suit periodically from time to time and finally on 06.06.2022 for filing written statement, on which date, no written statement was filed. Thereafter, vide order dated 07.07.2022, the trial Court set the appellant/defendant as *ex parte* 07.07.2022 and decreed the suit. Subsequent to that, the appellant filed an application to set aside the *ex parte* decree on 29.07.2022 along with the written statement. However, the trial Court, without considering the reasons assigned in the I.A., dismissed the application. Hence the present appeal.

3. The main reason assigned by the appellant for non-filing of the written statement is that, since the appellant was aged about 70 years and suffering from severe jaundice, he was not able to meet his lawyer to sign the relevant papers. Thus, there was a delay in filing the written statement. However, the said aspect was not considered by the trial Court. On the other hand, the trial Court came to the conclusion that,



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when the defendant was able to file the application to set-aside the *ex-parte* decree within 22 days from the date of *ex parte* decree, it appears that the appellant was following the Suit proceedings by standing outside of the Court, but failed to file the written statement despite granting the time. With this observation, the said application was rejected by the trial Court.

4. The learned counsel further submitted that the reason for non-filing of the written statement is only due to the age factor and health ailments, the defendant was not able to reach the lawyer to sign the relevant papers. He submitted that already the written statement has been filed along with the I.A. and it was not the intention of the appellant to drag on the matter. Hence, the appellant prayed for allowing the present appeal.

5. Despite service of notice on the respondent and his name is also printed in the cause list, none appeared on behalf of the respondent, and it shows that the respondent is not interested to contest the present appeal.



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6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On perusal of the records, it appears that in the present case, due to non-filing of the written statement before the Trial Court, the appellant was set as *ex parte* by the Trial Court on 06.06.2022 and thereafter on 07.07.2022, *ex parte* decree was passed. Aggrieved by the same, the appellant herein filed I.A. in time without delay, seeking to set-aside the *ex parte* decree. However, it is unfortunate that the Court below found fault with the appellant though he filed an application to set-aside the *ex parte* decree in time along with written statement. Considering the fact that when the appellant was able to file the application within 22 days subsequent to the *ex parte* decree, the trial Court suspected that the defendant might have been watching the entire Court proceedings by standing outside of the Court and consequently, dismissed the application.

8. It is pertinent to note that the appellant is aged 70 years and he has engaged a counsel on his behalf by offering vakalat to him.



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Therefore, once the vakalat is handed over to the counsel, he is supposed to appear before the trial Court on behalf of the appellant. Therefore, the trial Court has to find fault with the counsel and not with the defendant. However, in the present case, the reason assigned by the appellant was only due to the age factor and suffering from jaundice and taking treatment, he was not able to reach his counsel and sign the relevant papers. This Court finds that the reasons assigned by the appellant are reasonable and convincing, which were not considered by the trial Court in proper perspective.

9. In the light of the above, the Appeal is allowed and the order dated 15.12.2023 passed in I.A.No.1 of 2022 passed by the trial Court is set aside and also the *ex parte* decree granted by the Trial Court on 07.07.2022 is set-aside and the Suit is restored to file. Since the appellant had already filed the Written Statement along with I.A. on 29.07.2022, the trial Court is directed to take the written statement on record, if it is otherwise in order and proceed with the suit proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No



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Krishnan Ramasamy,J.,
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To

1. II Additional District Judge,
Tindivanam
2. The Section Officer,
V.R. Section,
High Court, Madras.

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