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CRP.No.268 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.268 of 2024
and C.M.P.No.1263 of 2024

S.Sarup Chand
Petitioner

..

Versus

K.Sivakumar

.. Respondent

Prayer:- Civil Revision Petition filed under Section 151 of Code of Civil Procedure, to set aside the fair and decretal order dated 06.11.2023 in I.A.No.252 of 2022 in M.K.M.O.S.No.270 of 2015 on the file of the District Munsif-cum-Judicial Magistrate Court, Cheyyur

For Petitioners : Mr.S.Sriram

For Respondent : Mrs.R.Poornima
for Mr.G.Punniakotti

ORDER

Challenge has been made to the order allowing the application filed by the respondent/third defendant to condone the delay of 787 days in setting aside the exparte decree dated 30.01.2010.



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2. The petitioner herein filed a suit for declaration against the respondent and others in O.S.No.270 of 2015. When the matter was posted for PW1 cross examination, the respondent/3rd defendant was called absent and set exparte. The suit came to be decreed exparte on 30.01.2020. To set aside the exparte decree, application has been filed by the respondent/third defendant under Section 5 of the Limitation Act.

3. It is the contention of the respondent/third defendant before the Trial Court that his father was bedridden and his son met with an accident, hence, could not meet his previous counsel and further was affected by Covid-19. Therefore, there was a huge delay. The Trial Court considering the explanations offered by the respondent exercising the discretion by granting liberal approach condoned the delay, thereby the application was allowed. Challenging the order, the instant revision.

4. The learned counsel for the petitioner would submit that sufficient reasons have not been accorded by the respondent/third defendant. Hence, seeks for allowing of this petition.



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5. Heard both sides and perused the materials placed on record. On perusal of the typedset of papers, it would indicate that the by way of exparte decree, the registered document is sought to be cancelled and that apart the reasons assigned by the respondent/third defendant that his father was bedridden and his son was met with accident and further lock down was also imposed is more improbable. It is relevant to note that the Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359 held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

6. Such view of the matter, I do not find any merits in this Revision and the same stand dismissed. Consequently, connected miscellaneous petition is closed. The respondent/third defendant is directed to deposit a further sum of Rs.10,000/- before the Trial Court within a period of one month from the date of receipt of a copy of this Order.

02.12.2024

dhk



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Index : Yes/No
Internet : Yes/No

N.SATHISH KUMAR, J.,

dhk

To,

The District Munsif-cum-Judicial Magistrate
Cheyyur

C.R.P.No.268 of 2024

02.12.2024