



A.No.1635 of 2024

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in C.S.No.127 of 2022**

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N.SATHISH KUMAR.J.,

This application has been filed to set aside the *ex-parte* order passed by this Court. The suit has been filed for permanent injunction and also damages for the alleged defamatory statement is said to have been circulated by the applicant against the plaintiff. As the defendant failed to appear, the defendant was set *ex-parte*. Thereafter, *ex-parte* decree was passed against him on 04.01.2024. Now, the application has been taken out by the defendant to set aside the *ex-parte* decree mainly on the ground that no affidavit or summon was served on him. Only on the basis of publication, he has been set *ex-parte* and subsequently, *ex-parte* decree was passed against him on 04.01.2024. However, it is the contention that he came to know the *ex-parte* decree during the second week of January, 2024. Hence, seeks to set aside the *ex-parte* decree.

2. The learned Senior Counsel for the respondent filed counter denying the entire allegations. It is the submission of the respondent that the plaintiff is aware of the Suit and in fact, in the application stage, private notice is



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served to the applicant and received such notice on 18.07.2022. Thereafter, he has engaged a counsel and vakalath also filed on his behalf. Thereafter, vakalath was returned on 29.07.2022. Therefore, the contention of the applicant that the applicant is not served with any notice or summons is false and contrary to the fact. Hence, opposed this application.

3. The learned counsel for the applicant would submit that he may be permitted to file a better affidavit within a week. This Court pointed out that the very same counsel had filed vakalath on behalf of the applicant in the year 2022 itself. Therefore, the applicant has filed affidavit which is contrary to the fact. This Court is of the considered view that to remove such admissions or false submissions on record, the parties cannot be given undue advantage to file better affidavit. Be that as it may, this application filed to set aside the *ex-parte* decree dated 04.01.2024 on the ground that no notice or summon was served on the applicant.

4. On perusal of the records, it is the stand of the applicant that he came to know the *ex-parte* decree only on 04.01.2024. The very same



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statement is absolutely a false statement. On perusal of the records, it shows that private notice has been served even during the notice stage. The acknowledgement card is also filed to substantiate the said service. The present counsel has filed vakalath and appeared on behalf of the applicant on 14.07.2022 in O.A.No.390 of 2022. Thereafter, the vakalath has been returned on 29.07.2022. Therefore, when the applicant is aware of the proceedings and received the notice, engaged a counsel, now he cannot contend that he has no knowledge of the pending suit. The applicant is running a Youtube and he is also aware of the Court proceedings, now cannot contend that no notice has been served on him. When the suit was filed, in the first instance, the conduct of the applicant engaging a lawyer and thereafter remained *ex-parte*, indicates that he was watching the proceedings carefully. The reason stated in the affidavit is contrary to the fact, placed before this Court. Such person cannot seek indulgence of this Court to set aside the *ex-parte* order or decree. Normally Court would be lenient in favour of the parties who suffer the *ex-parte* decree by setting aside the order, provided that the person comes to the Court with clean hands. When applicant comes to the Court suppressing the material facts, they are not



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entitled to such leniency from the Court. Accordingly, I do not find any merit and the application to set aside the *ex-parte* decree passed against him is dismissed.

Accordingly, this application is dismissed.

27.03.2024

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