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Application No.934 of 2024

Application No.934 of 2024 in C.S.No.534 of 2012

Reserved on:20.03.2024

Delivered on: .07.2024

A.A.NAKKIRAN, J.

The civil suit in C.S.No.534 of 2012 was filed by the respondent/plaintiff to recover a sum of Rs.30,60,000/- from the applicant/defendant with interest at the rate of 24% per annum on Rs.21,64,000/- from 01.09.2010, on Rs.8,96,000/- from 01.10.2010 till the date of plaint and at 24% per annum on Rs.30,60,000/- from the date of plaint till the date of realization. Since the applicant/defendant has not filed an application for leave to defend within 10 days of receipt of summons for Judgment, he was set exparte and exparte decree was on 19.11.2013. Thereafter, the applicant/defendant has filed the application in A.No.6438 of 2013 to set aside the exparte decree passed on 19.11.2013. This Court, by order dated 06.08.2021, dismissed the said application. As against which, the present application has been filed by the applicant/defendant, however, with the delay of 903 days.



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2. The learned counsel for the applicant/defendant would submit that the applicant/defendant was not duly served with summons. She used to go out of station most of the days due to his business tours. On 22.04.2013, she came to know that a court notice was affixed in her house door. When she contacted his previous counsel, he was informed that she was set exparte. Since there was no progress by her previous counsel, she obtained change of vakalat from her previous counsel and filed the same. As per the provisions of Order 37 Rule 3 of C.P.C, the applicant/defendant ought to have filed an application for leave to defend the case within 10 days from the date of service of summons for Judgment. Since her previous counsel omitted to follow the procedures, exparte decree was passed. Hence, she filed an application to set aside the exparte decree, which was dismissed on 06.08.2021. Since it was Covid time, she did not meet her counsel. In the meantime, her husband was sick from March 2022. The learned counsel would further submit that in fact the order copy was made ready on 14.02.2023. In the meantime, since compromise talk was on progress, the



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respondent/plaintiff stopped the applicant/defendant from filing application against the ex-parte order dated 06.08.2021. Hence, there is a delay of 907 days in preferring the above application.

3. The learned counsel for the respondent/plaintiff would submit that there are four notices sent to the last known addresses of the applicant/defendant and they were returned with an endorsement as 'intimated', 'left', 'insufficient address' and 'not known'. The applicant had wantonly and wilfully chosen to evade receipt of the said legal notices. Subsequently, substituted service by paper publication was ordered. The applicant had wantonly and wilfully chosen to evade receipt of the suit summons as well which was returned with the bailiff's remarks 'door locked. Therefore, the present application to condone the delay of 907 days in not maintainable and it is liable to be dismissed.

4. I have considered the submission of both the learned counsels and perused the materials available on record.



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5. A perusal of the order dated 06.08.2021 shows that the respondent/plaintiff has filed the suit. As per Order XXXVII Rule 3(5) leave to defend has to be filed within 10 days. However, the applicant/defendant failed to do so. The reason stated by the applicant that she was not aware of the procedure is not accepted by the Master. The applicant/defendant was well aware of the pending of the suit and had the knowledge that she was set exparte. The negligence on the part of the applicant/defendant to follow the proceedings and non appearance of her on hearing dates is not acceptable. The reason of the non-intimation of her previous counsel about the exparte order, is not acceptable and cannot be considered as a valid reason to allow this application. The applicant/defendant has been quite and dormant knowing well the proceedings of this suit and dragged the proceedings according to her whims and fancies. In fact, the applicant/defendant was well aware of the entire Court proceedings and she wantonly and wilfully chosen to evade the same. Hence, the reason stated by the applicant is not acceptable and cannot be considered.



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6. In view of the above, this application in A.No.934 of 2024 is
dismissed. No costs.

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