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C.R.P.No.2746 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2746 of 2024 and
C.M.P.No.14555 of 2024

Mohammed Saleem

... Petitioner

Vs.

1.Ramzan Beevi

2.G.Selva Mohammed

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated on 05.03.2024 in I.A.No.9/2023 in O.S.No.2030 of 2021 on the file of XXI Assistant City Civil Court.

For Petitioner : Mr.I.Shakira
For R2 : Mr.Y.Kajanavas

ORDER

The petitioner/1st defendant in O.S.No.2030 of 2021 filed this civil revision petition seeking to set aside the impugned order, dated 05.03.2024



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in I.A.No.9 of 2023 in O.S.No.2030 of 2021 passed by the learned XXII Assistant Judge, XXI Assistant City Civil Court (FAC) at Chennai.

2.The learned counsel for the petitioner submitted that the lower Court failed to consider the averments made by petitioner in interlocutory application for the reason that earlier Counsel who appeared for petitioner, was practicing in Tambaram Court and given change of vakalat due to his non-availability. When the present counsel engaged, it came to knowledge that for non-filing of written statement as early as in the year 2021, the petitioner set exparte. It is further submitted that the 2nd respondent being the owner of the property, he permitted the petitioner and his wife/1st respondent to accommodate a portion to live as a permissive occupant. Since there was no proper instruction to the petitioner from the earlier Counsel, written statement could not be prepared and filed. After coming to know about the same, change of vakalat obtained. Thus, non-filing of written statement is neither willful nor wanton, hence, he prayed for setting the impugned order.



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3.The learned counsel for the 2nd respondent/plaintiff strongly opposed the submission of the learned counsel for the petitioner stating that the petitioner and the 1st respondent are husband and wife and both are living together. This being so, the 1st respondent is participating the trial on the other hand for the purpose of dragging on the proceedings, the petitioner not filed written statement, hence, he was set exparte. Now blaming the Advocate for not filing written statement is not proper. He further submitted that if the petitioner is permitted to file written statement, some new facts would be brought in. In such circumstances, the 2nd respondent/plaintiff to be given opportunity to adduce additional evidence answering to the new facts. Hence, the 2nd respondent has got no serious objection and the only thing is within the time limit the suit to be completed.

4.Considering the submissions and on perusal of the materials, it is seen that in this case, the petitioner/1st defendant set exparte in the year 2021 and the 1st respondent/2nd defendant is none other than the wife of the petitioner/1st defendant. The 1st respondent gave evidence before the lower



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Court and further the evidence on the side of the plaintiff/2nd respondent is also completed. In any event, for complete justice and to give one more opportunity to the petitioner, this Court is inclined to set aside the impugned order and permit the petitioner to participate in O.S.No.2030 of 2021 and to file written statement.

5.In view of the above, this Court set asides the exparte order, dated 10.12.2021 and also set asides the impugned order, dated 05.03.2024 in I.A.No.9 of 2023 in O.S.No.2030 of 2021 passed by the learned XXII Assistant Judge, XXI Assistant City Civil Court (FAC) at Chennai is set aside. The learned XXII Assistant Judge, XXI Assistant City Civil Court (FAC) at Chennai is directed to permit the petitioner/1st defendant to file written statement in O.S.No.2030 of 2021. In the event of new facts brought in by the petitioner/1st defendant in written statement, the 2nd respondent/plaintiff to be permitted to reply for the same and adduce additional evidence if required. The suit in O.S.No.2030 of 2021 to be completed within a period of three months from the date of receipt of a copy of this order.



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WEB COPY 6. Accordingly, this civil revision petition stands allowed.

Consequently, connected civil miscellaneous petition is closed. No costs.

23.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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To

The XXI Assistant Judge,
XXI Assistant City City Civil Court,
Chennai.



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M.NIRMAL KUMAR, J.

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