



CRP No.2886 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.2886 of 2024
and CMP No.15347 of 2024

Sri Krishna Traders
by its Proprietor D.Vijayaraj
No.30-E1, Dharapuram Road,
Udumalpet Town & Taluk,
Tiruppur District.

.. Petitioner

-VS-

T.N.Kanagaraj

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the Proceedings of the Court of the IV Additional District Judge, Udumalpet in I.A.No.4 of 2024 in O.S.No.413 of 2019 dated 10.04.2024.

For Petitioner : Mr.N.Thiagarajan



WEB COPY



CRP No.2886 of 2024

ORDER

This civil revision petition arises against the order of the learned IV Additional District Judge at Udumalpet in I.A.No.4 of 2024 in O.S.No.413 of 2019, dated 10.04.2024.

2. O.S.No.413 of 2019 is a suit filed for recovery of a sum of Rs.26,20,880/-. This is on the basis of the goods supplied by the plaintiff to the defendant. In the said suit, the defendant was set ex parte on 07.03.2022. However, the Court did not proceed to decree the suit. Since the suit was still pending consideration, the sole defendant took out an application under Order 9 Rule 7 of the Code of Civil Procedure to set aside the ex parte order. The said application was considered by the learned Judge after the receipt of a counter from the plaintiff, and he allowed the application on payment of costs of Rs.2,000/-. Against which, the present civil revision petition.

3. Heard Mr.N.Thiagarajan for the civil revision petitioner.



CRP No.2886 of 2024

WEB COPY

4. The learned District Judge has found "good cause" to set aside the ex parte order. Unless and until the said order is capricious or arbitrary, I am not in a position to interfere under Article 227 of the Constitution of India. The defendant was set ex parte on account of the fact that he did not file his written statement. The defendant has pleaded that on account of heart ailment, he was not in a position to give instructions to his counsel so as to enable him to present his defence. The learned trial Judge, I feel, has rightly come to the conclusion that heart ailment is a sufficient ground to set aside the ex parte order.

5. The argument of Mr.N.Thiagarajan is that the application was filed after a period of two years and therefore, it ought not have been entertained by the learned trial Judge. In so far as Order 9 Rule 7 is concerned, there is no question of any limitation. It is the discretion of the Court on "good cause" being shown to restore the party to the position on the date on which he is set ex parte. The learned trial Judge who had the benefit of looking at the defendant has concluded that good cause exists. I am not inclined to



CRP No.2886 of 2024

interfere with the said order as he has exercised his discretion in a proper manner.

6. The order of the learned trial Judge in I.A.No.4 of 2024 in O.S.No.413 of 2019 dated 10.04.2024 stands confirmed. Mr.N.Thiagarajan submitted that the matter is now listed for issues. The learned trial Judge is requested to expedite and dispose of the suit as expeditiously as possible.

The civil revision petition is, accordingly, dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.08.2024

Index : Yes/No
Neutral Citation : Yes/No
sra

To

The IV Additional District Court,
Udumalpet.



WEB COPY



CRP No.2886 of 2024

V.LAKSHMINARAYANAN, J.

(sra)

CRP No.2886 of 2024

05.08.2024