



C.R.P. (NPD) No.2703 of 2021
and CMP No.19852 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (NPD) No.2703 of 2021
and CMP No.19852 of 2021

Somu

.. Petitioner

Vs.

Anandhaselvi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.10.2021 made in I.A.No.718 of 2019 in O.S.No.164 of 2015 on the file of the learned Subordinate Judge, Dharapuram insofar as condition imposed to deposit 80% of the decree amount is concerned by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr. R.Babu



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ORDER

The Revision is against an order made in IA No.718 of 2019 in OS No.164 of 2015 and an application filed to set aside the *exparte* decree dated 02.07.2018.

2. The respondent herein filed a suit for recovery of a sum of Rs.3,66,000/- with subsequent interest on the principal amount of Rs.3,00,000/-. The said suit was decreed *exparte* on 02.07.2018 since the defendant failed to cross-examine P.W.1. Immediately thereafter on 03.07.2018, the petitioner filed IA No.718 of 2019 seeking to set aside the *exparte* decree. That application was kept pending for almost two years and it is seen from the orders of the Trial Court that the respondent/plaintiff took adjournment for filing counter for two years, but did not file a counter.



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3. After setting the respondent *exparte* in this application, the learned Trial Judge imposed onerous condition of a direction to deposit 80% of the decree amount for setting aside the *exparte* decree. No doubt a Court is empowered to impose condition for setting aside the *exparte* decree, but the condition cannot be onerous condition. When the rights of parties are not decided on merits, the Court cannot impose a condition directing the petitioner to deposit a major portion of the decree amount to set aside an *exparte* decree. It is clear to my mind that the above condition directing the petitioner to deposit 80% of the decree amount is highly onerous and the same cannot be sustained by this Court.

4. Hence the Revision is **allowed**, the order imposing condition to deposit 80% of the decree amount is set aside, IA No.718 of 2019 will stand allowed subject to the condition, the petitioner pays cost of Rs.5,000/- to the respondent within a period four weeks from today. Cost shall be paid to the counsel appearing in this Court. On such payment and production of receipt, the Trial Court will restore the suit in OS NO. 164 of 2015 and dispose it of in accordance with law within a period of three months there

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from. No costs. Consequently, the connected miscellaneous petition is
closed.

11.01.2024

jv
Index: No
Internet: Yes
speaking order
Neutral Citation: No

To

The Subordinate Judge,
Dharapuram



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