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C.R.P.(PD).No.3066 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3066 of 2021
and CMP.No.21634 of 2021

Sivagami

... Petitioner

vs.

Sneh Lata Nath

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 19.11.2021 passed by the learned Subordinate Court, Coonoor, the Nilgiris in I.A.No.15 of 2021 in O.S.No.161 of 2019 in respect of condition that the petitioner shall deposit 50% of the suit claim amount before the Subordinate Court at Coonoor, the Nilgiris on or before 29.11.2021 and also pay Rs.2,000/- as cost to the respondent.

For Petitioner
For Respondent

: Mr.L.Mouli
:Mr.V.Logesh
for sole respondent



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below directing the petitioner to deposit 50% of the decretal amount as a condition to condone the delay of 379 days in filing petition to set aside the ex-parte decree.

2. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the suit which was originally pending on the file of the Subordinate Court Udthagamandalam in O.S.No.27 of 2014 was transferred to Subordinate Court, Coonoor and renumbered as O.S.No.161 of 2019. After transfer, no notice was issued to the petitioner and therefore, he was not aware of the listing of the case for trial and as a consequence, the ex-parte decree passed against him on his failure to cross examine PW.1. After receipt of notice in execution proceedings, the petitioner preferred the present application to set aside the ex-parte decree along with condone delay petition. In the impugned order, after verification, it was recorded by Court below that no notice was sent to the petitioner and his counsel with respect to the renumbering of the case. When the petitioner was



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not issued with the notice regarding the date of hearing before the transferee

WEB COURT, the averment found in the affidavit filed by the petitioner gets proved.

Therefore, the petitioner has succeeded in showing sufficient cause for his default.

3. In such circumstances, the Court below ought not to have imposed onerous condition to direct the petitioner to deposit 50% of the suit claim. In the facts and circumstances of the case, this Court feels that the condition imposed by the lower Court is onerous in nature and hence the same is liable to be set aside and the Civil Revision Petition is allowed to that extent. Therefore, the impugned order is set aside only to the extent of imposing the condition of 50% of suit claim, in other respects, the impugned order is confirmed. The Court below is directed to take up the petition to set aside the ex-parte decree and dispose of the same as expeditiously as possible.



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4. Accordingly, the Civil Revision Petition is allowed. No costs.

WEB COMMENTS: Consequently, the connected civil miscellaneous petition is closed.

24.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
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The Subordinate Court, Coonoor,
the Nilgiris.



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S.SOUNTHAR, J.

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