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CRP.No.3163 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.3163 of 2017

R.Pakkirisamy

...Petitioner

Vs.

1.V.Jeevan

2.R.Subramani

...Respondents

PRAYER: Civil Revision Petition is filed under section 115 of Code of Civil Procedure, to set aside the fair and decretal order of dismissal, dated 02.07.2016 made in I.A.No.16062 of 2015 in O.S.No.7043 of 2012 by the VII Assistant City Civil Court, Chennai and consequently allow the same.

For Petitioner	:	Mr.R.Munusamy
For R1	:	No appearance
For R2	:	Not ready.

ORDER

This Civil Revision Petition has been filed praying to set aside the order dated 02.07.2016 passed in I.A.No.16062 of 2015 in O.S.No.7043 of 2012 on the file of the VII Assistant City Civil Court, Chennai. The petitioner herein has filed the above I.A. to condone the delay of 66 days in filing the petition to set aside the exparte decree. The said application was dismissed by the trial



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Court.

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2. A perusal of the court record would go to show that notice ordered by this court has not been served to the 2nd respondent. The learned counsel for the petitioner represented that already 2nd respondent died before filing the I.A. Since the suit is filed for the relief of permanent injunction and the 2nd respondent/2nd defendant died, he is not proper and necessary party to decide this petition and the learned counsel for the petitioner also made endorsement. In such view of the matter, this Court is inclined to dispose of the present civil revision petition.

3. According to the petitioner/defendant, he is the 1st defendant in the main suit and the respondent/plaintiff filed main suit for the relief of permanent injunction. The suit was posted on 01.09.2014 for filing written statement. Due to his old age, he was unable to appear before the Court on the particular date. Thereafter, on the same day itself, he filed petition and signed in the typed papers and thereafter, he came to know that the petition has not been numbered and the suit was decreed on 28.04.2015. There is a delay of 66 days in filing the petition to set aside the exparte order and file petition and sought to condone the delay. The said IA was dismissed by the trial Court. Therefore, to give a fair chance to the petitioner\defendant, pray this court to



set aside the order passed by the trial Court.

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4. The learned counsel for the petitioner/defendant would contend that due to old age of the petitioner/defendant, he could not file written statement within time. Thereafter, on 28.04.2015, ex parte decree was passed. To set aside the ex parte order, the defendant filed petition seeking to condone the delay of 66 days in filing the said set aside petition. But the trial Court not accepted the reasons stated by the petitioner/defendant. According to the revision petitioner/defendant, suit itself is not maintainable; petitioner-defendant is also a co-sharer of the suit property. The same was also admitted by the plaintiff/respondent. Hence, the learned counsel for the petitioner/defendant sought to condone the delay of 66 days in filing the petition to set aside the ex parte order.

5. There is no representation for the first respondent. Already notice served and name printed in the cause list.

6. This Court heard both sides and perused the records.

7. The petitioner/defendant has stated that due to his old age, he was unable to appear before the trial court on 01.09.2014, due to his non



appearance, ex-parte order was passed against him. Therefore, the petitioner/defendant on the same day itself signed in the papers to file petition to set aside the exparte order passed against him. Thereafter, he came to know that the petition has not been numbered and the suit was decreed on 28.04.2015. Again he filed petition to set aside the exparte order with condone delay petition to condone the delay of 66 days in filing the petition and the same was dismissed by the trial Court. The only reason stated by the petitioner/defendant is that the trial Court has not accepted the reasons stated by the petitioner. On perusal of records it is observed that the suit is filed for the relief of permanent injunction and the petitioner/defendant also one of the share holder and he is co-sharer. The delay is also only 66 days. By allowing the petition and deciding the case on merits no prejudice would be caused to the respondents. Therefore, considering the nature of suit and relationship of the parties and considering the fact that the petitioner is also one of the co-sharer, in order to avoid the multiplicity of proceedings and to give fair chance to the petitioner/defendant to defend his case, this court deems it fit and appropriate to condone the delay of 66 days in filing the petition to set aside the exparte order. The trial Court failed to consider the said facts and dismissed the petition.

8. For the reasons stated above, this Civil Revision Petition is allowed



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with the following directions:-

[i] The order passed by the trial Court in I.A.No.16062 of 2015 in O.S.No.7043 of 2012 dated 02.07.2016 is set aside.

[ii] The delay of 66 days in filing the petition to set aside the exparte order is condoned.

[iii] The trial Court is directed to number the I.A. filed under Order 9 Rule 13, within one week, if the petition is otherwise in order.

[iv] Thereafter, the trial Court is directed to dispose of the I.A. filed to set aside the exparte order within a period of two months from the date of numbering the petition.

No cost.

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Index : Yes/No
Speaking order/non-speaking order
mpa

To
The VII Assistant City Civil Court, Chennai.

P.DHANABAL, J.,

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