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C.R.P.[NPD].No.4484 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 08.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4484 of 2024

C.Kuppusamy

. . . Petitioner

Versus

K.Selvam

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order dated 23.07.2024 passed in I.A.No.1 of 2024 in O.S.No.1 of 2019 on the file of the Principal Sub Judge, Krishnagiri.

For petitioner : Mr.T.S.Baskaran

ORDER

Challenge has been made against the Order passed by the trial Court allowing the delay of 715 days to set aside the exparte decree, in the present Civil Revision Petition.

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2. The petitioner has filed the suit for specific performance. Originally the defendant was served summons on 08.02.2019. However, he did not appear and hence, he was set exparte. Thereafter, an application has been filed to set aside the exparte Order in I.A.No.1 of 2019 and the same was allowed on 03.12.2019 and the matter has been adjourned to 04.03.2020 for filing of written statement. As the written statement has not been filed on 04.03.2020, he was once again set exparte on 04.03.2020 and an exparte decree was passed on 04.03.2020. To set aside the said exparte decree, an application has been filed to condone the delay of 715 days. The said application was allowed by the trial Court with a cost of Rs.5000/- payable on or before 31.07.2024. Challenging the said application, the present Civil Revision Petition has been filed.

3. It is the contention of the petitioner that the defendant was already set exparte in the year 2019. Even after an opportunity given to the defendant by the trial Court, he has not filed the written statement. Further it is the contention of the petitioner that the decree has been put into execution and the property has also been sold in a public auction. Therefore, the Order passed by the trial Court has to be reversed.



4. A perusal of the entire materials indicate that the defendant was originally set exparte in the year 2019 by an Order dated 08.02.2019 and the matter was posted for filing of written statement on 04.03.2020. As the written statement has not been filed he was once again set exparte and exparte decree was passed on 04.03.2020. It is relevant to note that after the exparte decree till the date of filing of the application to set aside the exparte decree, there was lock down due to COVID pandemic. Therefore, that period has to excluded. That aspect has been considered by the trial Court and a liberal approach has been given to set aside the exparte decree. Therefore, this Court is of the view that the discretion is properly exercised by the trial Court. When a person is totally prevented to approach the Court during the lockdown, his substantial right cannot be denied merely on the basis of technicalities. Hence, the Order of trial Court does not require any interference.

5. The further contention of the petitioner is that the property has already been sold in a public auction and therefore, this petition is not maintainable. In the event, the petitioner succeeds in the suit, the remedy is always available to him to file an application for restitution under section 144 of Code of Civil Procedure.



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In such view of the matter, trial Court is directed to conduct trial expeditiously and dispose of the suit within a period of four months from the date of receipt of a copy of this Order.

6. With the above direction, this Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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