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CRP No.3 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.3 of 2024

D.Dhanabal

... Petitioner

Vs.

H.Basheer

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in IA No.3 of 2023 in OS No.158 of 2012 dated 18.08.2023 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioner

: Ms.S.Pooja Shree
for M/s.A.P.Parthasarathy and Associates



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order in IA No.3 of 2023 in OS No.158 of 2012 dated 18.08.2023 on the file of the II Additional Subordinate Judge, Coimbatore.

2. The petitioner is the plaintiff, and the respondent is the defendant in OS No.158 of 2012, on the file of the II Additional Subordinate Judge, Coimbatore. The petitioner/plaintiff has filed the suit under Order VII Rule 1 of CPC for declaration and permanent injunction against the respondent/defendant. After the completion of trial, since the defendant did not adduce his evidence, defendant's side evidence was closed on 22.06.2023 and the case was posted for arguments on 30.06.2023. Thereafter, the case was adjourned on four occasions and after hearing the arguments of the petitioner, the case was posted for judgment on 10.08.2023. Subsequently, the respondent/defendant had filed an



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application in IA No.3 of 2023 to re-open the case for adducing defendant's side evidence. That petition was allowed on 18.08.2023 on payment of costs of Rs.4,000/- payable by the respondent to the petitioner, on or before 05.09.2023. The costs imposed has been deposited in the court. Challenging the order dated 18.08.2023, the petitioner has filed the present civil revision petition.

3. Learned counsel for the petitioner submits that even after sufficient time was given by the trial court, the respondent/defendant did not come forward to adduce evidence. Therefore, defendant's side evidence was closed. The defendant has not given any valid reason in the affidavit filed by him for reopening his case. However, the Trial Court, without considering the contentions raised by the petitioner has allowed the said application on payment of costs of Rs.4000/-. Hence, the order passed by the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioner and perused the



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materials available on record.

5. The facts reveal that the petitioner/plaintiff has filed the suit for declaration and permanent injunction against the respondent/defendant. The suit was posted for defendant's side evidence on 22.06.2023. On that date, the defendant did not adduce evidence as he went for treatment to Kerala and his counsel also did not appear. Therefore, the defendant's side evidence has been closed and thereafter the case was posted for judgment on 10.08.2023. At this juncture, the defendant had filed an application in IA No.3 of 2023 to reopen of case and to permit him to let evidence. It is noticed in the impugned order that the trial court is satisfied with the reasons stated by the respondent/defendant for reopening his case.

6. A discretionary jurisdiction has been conferred upon the court while passing an order for reopening any case for giving sufficient opportunity to any party to let his evidence. In this case, the Trial Court by exercising its discretionary power has allowed the application to reopen the case and permitted the defendant to let his evidence on payment of costs of



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Rs.4,000/-.

7. The words '*sufficient cause*' have got to be construed with regard to the facts and circumstances of each case and liberally and so the question cannot be decided with the aid of decisions. In case of discretion, it is undesirable to act on precedence where the non appearance of the respondent/defendant was neither mala fide nor intentional, cause would be sufficient.

8. Sufficient cause is a question of fact and the court has to exercise its discretion in a varied and special circumstances depending upon the case.

9. I find no infirmity in the order passed by the Trial Court. There is no reason to interfere with the impugned order, as there is no merit in the revision. Hence, the civil revision petition is dismissed. There will be no order as to costs. Consequently, CMP No.21 of 2024 is closed.

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Internet: Yes/No
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V.SIVAGNANAM, J.,

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