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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.1023 of 2023

1.Selvaraj

2.John Chandhiraraj

...Petitioners

Vs.

Pauldurai

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 17.08.2022 made in I.A.No.3 of 2021 in O.S.No.325 of 2012 on the file of the Principal Subordinate Court, Tenkasi.

For Appellant : Mr.S.Vinodh

For Respondent : Mr.V.Sasikumar

ORDER

This Civil Revision Petition is filed against the Fair and Decreeetal order, dated 17.08.2022 passed in I.A.No.3 of 2021 in O.S.No.325 of 2012 on



the file of the Principal Subordinate Court, Tenkasi.

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2. The 1 to 3 defendants in the suit are revision petitioners herein and the plaintiff is the respondent herein. For the sake of convenience, the parties are referred to as plaintiff and defendants.

3. The plaintiff had filed a suit in O.S.No.323 of 2012 for declaration and injunction and also has obtained exparte decree dated 03.02.2020.

4. The contention of the defendants is that they entered appearance through advocate after receiving notice, then filed written statement. When the case was post for cross examination of the plaintiff, the defendants 1 to 3 failed to appear before Court. The reason stated by the defendants is that all the defendants are staying away from their native place and they were stationed outside due to their employment as daily wages. Due to their absence the Court set them exparte and the exparte decree was passed on 03.02.2020. Thereafter, the defendants have filed an application in I.A.No.3 of 2021 in O.S.No.325 of 2012 to condone the delay of 567 days in filing the restoration application. But the Court below disbelieved the case of the defendants and dismissed the same.



Aggrieved over the same, the defendants are before this Court.

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5. When the defendants are daily wages and in order to eke out their livelihood they were away from their native, then an opportunity out to be given to the defendants to contest the case. Considering the facts and circumstances of the case, this Court is inclined to allow this Civil Revision Petition with Costs.

6. Accordingly, this Civil Revision Petition is allowed and the defendants are directed to pay a sum of Rs.1,000/- to the plaintiff. On such payment, the suit in O.S.No.325 of 2012 is restored on file. The Court below is directed to complete the suit proceedings in O.S.No.325 of 2012, within a period of one year, from the date of receipt of copy of the Order. No Costs.

06.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Principal Subordinate Court,
Tenkasi.



2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.R.P(MD)No.1023 of 2023

06.09.2024