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C.R.P. (MD) No. 771 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 771 of 2024

and

C.M.P.(MD) No.4303 of 2024

M.K.Muthukumaran

... Revision Petitioner/Petitioner/Defendant

~VS~

S.Muthupandi

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order passed in I.A.No.1 of 2023 in O.S.No.298 of 2018 on the file of VI Additional District Judge, Madurai dated 16.02.2024 by allowing this Civil Revision Petition and decide the same on merits in accordance with law.

For Petitioner : Mr.P.Murugesan

For Respondent : Mr.C.Mayilvahana Rajendran



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ORDER

This Civil Revision Petition arises out of the order dated 16.10.2019 in I.A.No.1 of 2023 in O.S.No.298 of 2018 on the file of VI Additional District Judge, Madurai (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as their description in the suit in O.S.No.298 of 2018 before the Trial Court for the sake of clarity and convenience.

2. The aforesaid suit had been filed for recovery of Rs.1,25,00,000/- with interest and costs from the Defendant. The summons in that suit had been served on the Defendant on 08.01.2019 and the case was listed on 12.02.2019, 26.02.2019, 19.03.2019, 16.04.2019 and 30.04.2019 for filing written statement. The Defendant failed to do so and he was set exparte on 30.04.2019 and had forfeited his right to file written statement in that suit. After recording the evidence of the plaintiff, an exparte decree was passed on 16.10.2019 by a reasoned order. Subsequently, an application had been made to set aside that exparte decree along with the application in I.A.No.1 of 2023 in O.S.No.298 of 2018 to condone the delay of 1394 days in filing the same which was dismissed by the Trial Court by order dated 16.02.2024, which is challenged in this Civil



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3. It would be relevant to notice here that Rule 1 of Order VIII of the Code of Civil Procedure (hereinafter referred to as 'CPC' for short) requires the written statement of the Defendant to be filed within 30 days from the date of service of summons and time could be extended for a further period of 90 days aggregating in all for 120 days. Though the Hon'ble Supreme Court of India in ***Salem Advocate Bar Association -vs- Union of India*** [(2005) 6 SCC 344] has held that the said time limit is discretionary and could be extended on satisfactory explanation, no efforts had been then taken by the Defendant to set aside that order which has attained finality. It is also brought to notice that the entire amount due under the exparte decree passed in the suit by the Trial Court has been recovered from the Defendant in E.P.No.86 of 2022 and this Court by its orders dated 15.02.2023, 21.12.2023, 03.01.2024 and 07.02.2024 in C.R.P. (MD) Nos.370, 3336, 3427 of 2023 and 266 of 2024 respectively had declined to interfere with the matter in the various stages of the execution proceedings. The Defendant has not been able to show any infirmity in the judgment passed in the suit or in the impugned order of the Trial Court warranting interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.



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In the result, the Civil Revision Petition, which is devoid of merits, is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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PKN

Index : Yes/No

Internet : Yes/No

To

The learned VI Additional District Judge,
Madurai.



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P.D. AUDIKESAVALU, J.

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