



C.R.P. (MD) No. 3158 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 3158 of 2023

Avudaiyappan @ Thangam

... Petitioner/Plaintiff

-VS-

1.Muthuselvi
2.Ramalakshmi

... Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.2 of 2022 in O.S.No. 234 of 2021 dated 18.08.2023 on the file of the Additional District Court (Fast Track Court), Tenkasi and allow the civil revision petition.

For Petitioner : Mr.R.Ponkarthikeyan

For Respondents : Mr.V.Sasikumar

ORDER

This Civil Revision Petition is directed against the order dated 18.08.2023 made in I.A.No.2 of 2022 in O.S.No.234 of 2021.



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2. The application is filed to condone the delay of 129 days in setting aside the *exparte* decree. In the counter-affidavit filed to the said application, the petitioner herein and the respondent in the application had in paragraph (3) had specifically pleaded that what is contained in the vakalat filed along with the application and in the affidavit filed in support of the application is not the signature of the petitioner therein. He had specifically stated that the signatures visibly differ from the signatures of the very same parties made in O.S.No.113 of 2019.

3. Even before this Court, the copies of the said plaint is also produced and a copy of the affidavit containing the signature is produced. When a query was made by this Court as to the visible difference in the signature, the learned Counsel appearing for the respondent would submit that in view of lapse of time and the said Muthuselvi also becoming sick, the difference in signature appears. However, when the respondent has filed such a counter, the petitioner ought to have filed a reply stating the said facts. Neither the said Muthuselvi filed a reply to the counter-affidavit nor the Trial Court considered the issue. When the issue raised in the counter that the concerned party herself was not filed the vakalat or the affidavit, then the applications cannot be allowed without even giving a finding with reference to the said allegation.



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4. In view thereof, finding force in the submission of the learned Counsel for the petitioner, the Civil Revision Petition is disposed of on the following terms:-

(i) The order passed in I.A.No.2 of 2022 in O.S.No.234 of 2021 dated 18.08.2023, shall stand set aside;

(ii) The I.A.No.2 of 2022 is remitted back to the file of the learned Additional District Judge (Fast Track Court), Tenkasi;

(iii) Within two weeks from the date of receipt of a copy of the order, the respondent is entitled to file such reply, as may be advised, to the counter filed by the petitioner.

(iv) If such a reply is filed, the same shall also be taken on file and the Trial Court shall once again endeavour to dispose of the interlocutory application by specifically rendering a finding with reference to the said allegation one way or the other. No costs.

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NCC : Yes/No



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D.BHARATHA CHAKRAVARTHY, J.

PKN

To

1. The Additional District Court (Fast Track Court), Tenkasi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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