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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.106 of 2024

and

C.M.P.(MD) No. 489 of 2024

G.Pandi

...Petitioner

Vs.

Nagarajan

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records pertaining to the order dated 01.11.2023 made in I.A.No.250 of 2023 in O.S.No.149 of 2019 on the file of the Subordinate Court, Usilampatti and set aside the same.

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.J. Senthil Kumaraiah

ORDER

This Civil Revision Petition is filed by the defendant in the suit to set aside the order, dated 01.11.2023 passed in I.A.No.250 of 2023 in O.S.No. 149 of 2019 on the file of the Subordinate Court, Usilampatti.



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2. The defendant is the revision petitioner herein and the plaintiff is the respondent herein. For the sake of convenience, the parties shall be referred to as plaintiff and defendant.

3. The plaintiff has filed a suit in O.S.No.149 of 2019 for specific performance and recovery of possession of the suit property. The defendant had entered appearance through advocate and had filed written statement but failed to appear at Trial stage, hence the Trial Court has passed an exparte Judgment and Decree.

4. The contention of the defendant is that he could not contest the case, because his counsel had become Public Prosecutor for NDPS cases and the said information was received by the defendant belatedly. The defendant was taking steps to appoint another advocate. In the meantime, the case came up for hearing and the defendant was set exparte.

5. Thereafter, the defendant has filed a petition on 07.06.2023 to set aside the exparte decree along with condone delay application to condone the delay of 49 days. The condone delay petition was dismissed against which



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this Civil Revision Petition is filed. It is seen from the records that the exparte decree was passed on 19.04.2023, thereafter summer vacation started. Therefore, the delay is not deliberate.

6. Accordingly, this Civil Revision Petition is disposed of. Consequently, the delay of 49 days is condoned and the exparte Judgment and decree dated 19.04.2024, passed in O.S.No.149 of 2019 is hereby set aside. The Sub Court, Usilampatti, is directed restore the suit O.S.No.149 of 2019 on file and allow the parties to contest the suit on merits. The entire proceedings shall be completed within a period of six months from the date of receipt of a copy of the order. It is seen in the meanwhile the plaintiff had filed E.P. No.15 of 2023 and the same shall be kept in abeyance. The said EP would depend on the outcome of the suit. No Costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Court,
Usilampatti.
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.106 of 2024

16.10.2024