



C.R.P.No.780 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.780 of 2025

E.Mohana

... Petitioner

Vs

G.Saravanan

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decretal order passed in I.A.No.1 of 2023 in O.S.No.52 of 2018 vide order dated 26.04.2024 on the file of the District Munsif Court, Tambaram at Chennai.

For Petitioner : Mr.S.C.Sezhiyan

For respondent : Mr.C.R.Malarvannan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order passed in I.A.No.1 of 2023 in O.S.No.52 of 2018 vide order dated



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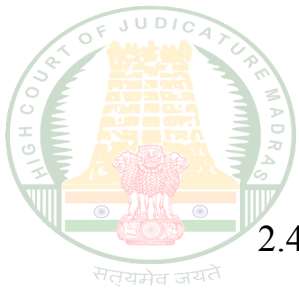
26.04.2024 on the file of the District Munsif Court, Tambaram at Chennai.

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2. The brief facts of the case are as follows :-

2.2.The petitioner is the defendant. The respondent had filed a suit in O.S.No.52 of 2018 seeking for permanent injunction restraining the defendant and, her men from in any manner interfering with the Easementary right to use of Ventilator and other affixtures appertained on the plaintiff's suit "A" schedule mentioned property and also for permanent injunction restraining the defendant or anybody acting on their behalf from in any manner interfering with the common right and usage of the plaintiff and defendants' right to use of common passage more fully set out in the schedule "B" property.

2.3. The petitioner/defendant had engaged a counsel and thereafter, she had not appeared before the trial Court. After examining the plaintiff and marking the documents viz., Ex.A1 to A19, the trial Court had decreed the suit *ex parte* in favour of the plaintiff. The petitioner/defendant had filed an application in IA.No.1 of 2023 seeking to set aside the decree along with an application to condone the delay of 141 days in filing the application to set aside the *ex parte* decree.



2.4.The petitioner /defendant had contended that she had engaged a counsel namely, Mr.P.Chandramohan, at Tambaram Court and for which vakalath was also filed on her behalf and a written statement was also filed on 19.04.2018 and thereafter, issues were framed. Subsequently, since her husband was admitted at Gleneagles Global Health City, Sholinganallur at Medavakkam for treatment and all of sudden, he died on 20.08.2020 due to COVID-19, she was unable to appear before the Court and hence, she was unable to cross examine the plaintiff and let in evidence on her side and marked documents and thereby, an exparte judgment and decree came to be passed.

3.The respondent/plaintiff had filed counter contending that the judgement was not an *ex parte* judgment, but it was an judgment on merits based on the evidence let in by the plaintiff and marking 19 documents and thereby the petition seeking to set aside the Judgment is not maintainable. The trial Court had dismissed the petition against which the revision has been filed.

4.The learned counsel for the petitioner would submit that the petitioner had engaged a counsel and filed a written statement but she could not appear before the



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Court and let in evidence since her husband was admitted in the hospital due to

COVID-19. The judgment is based on the uncontested evidence of the plaintiff and thereby it is only an *ex parte* judgment and the trial Court ought to have set aside the *ex parte* judgment, whereas, the trial Court holding that the application seeking to set aside the *ex parte* judgment is not maintainable had dismissed the same. Hence, the petitioner/defendant sought to allow this petition.

5.Per contra, the learned counsel for the respondent/plaintiff would submit that the petitioner/defendant had filed a written statement before the trial Court and thereafter, the trial Court had framed issues and a full fledged trial was conducted during which, the plaintiff was examined and the documents were marked, viz., Ex.A1 to A19. The petitioner /defendant was afforded several opportunities to appear before the Court and cross examine the plaintiff and since she did not appear before the Court, the Court passed the judgment on merits and it cannot said that it is an *ex parte* judgment and hence, he seeks dismissal of the petition.

6.Heard the learned counsel on either side and perused the materials



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available on record.

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7. Admittedly, the petitioner/defendant had engaged a counsel and subsequently, since her husband had passed away due to Covid, she was unable to appear before the Court below and failed to properly instruct her counsel to take up the case and thereby the trial Court, after examining the plaintiff as PW1 and marking the documents viz., Exs.A1 to A19, decreed the suit in favour of the plaintiff. Having perused the material placed on record, this Court finds that the judgment has been passed based on the uncontested evidence of the respondent/plaintiff and further that the reason assigned by the petitioner/defendant for her non-appearance before the Court is convincing and acceptable and hence, this Court is of the view that a reasonable opportunity should be given to the petitioner/defendant to inspect/interrogate the documents marked in evidence, viz., Exs.A1 to A19 and thereafter cross-examine PW1, which is essential for ensuring a fair trial.

8. However, at the same time, considering the interest of the plaintiff whose time has been wasted on account of non appearance of the petitioner/defendant



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before the trial Court and in order to compensate the same, this Court feels it appropriate to award costs of Rs.10,000/- to the respondent/plaintiff, payable by the petitioner/defendant.

9. Accordingly, this Civil Revision Petition is allowed and the fair and decretal order dated 26.04.2024 passed in I.A.No.1 of 2023 in O.S.No.52 of 2018 by the learned District Munsif Court, Tambaram at Chennai is set aside subject to the condition that the petitioner/defendant shall pay costs of Rs.10,000/- (Rupees Ten thousand only) to the respondent/plaintiff on or before 06.06.2025. The parties are directed to appear before the trial Court on 09.06.2025 and the trial shall be completed within a period of four(4) months, thereafter.

15.04.2025

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The District Munsif Court, Tambaram at Chennai.



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A.D.JAGADISH CHANDIRA, J.

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