

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 20.01.2015

CORAM

The Hon'ble Mr.Justice **K.KALYANASUNDARAM**

CRP NPD No.1939 of 2014

Employees State Insurance Corporation
Regional Officer, Tamilnadu,
No.143, Sterlling Road,
Nungambakkam,
Chennai 34
represented by its
Deputy Director (Admn.)

.. Petitioner/ Plaintiff

Vs

The ESI Employees Union
Tamilnadu Regional
143, Sterlling Road,
Nungambakkam,
Chennai 34
Rep. by its General Secretary

.. Respondent/Defendant

Prayer: Civil Revision Petition is filed under Section 115 of CPC against the order and decree dated 21.08.2009 made in I.A.No.542 of 2009 in O.S.No.1323 of 2005 on the file of VI Asst. Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Prabhakaran
for M/s.A.Paramasivam

For Respondent : Mr.Ashok Menon

ORDER

This revision is directed against the order passed by the VI Asst. Judge, City Civil Court, Chennai in I.A.No.542 of 2009 in O.S.No.1323 of 2005.

2. The petitioner is the plaintiff in O.S.No.1323 of 2005 which was filed for declaration declaring that the defendant and its members are not entitled to hold any demonstration, dharna or any other union activities within the suit premises and for consequential injunction.

3. The suit was dismissed for non-prosecution on 23.10.2007. Thereupon, the plaintiff filed I.A.No.541 of 2009 to condone the delay of 222 days in filing the application to set aside the order of dismissal dated 23.10.2007 and restore the suit. The application was resisted by the respondent. The trial court dismissed the application. Aggrieved by the order, the present revision is filed.

4. Mr.S.Prabhakaran, learned counsel for the petitioner submitted that the delay was properly explained by the petitioner however, the trial court, taking note of the fact that the affidavit was sworn by the clerk of the learned counsel, dismissed the application.

The learned counsel further submitted that there was no deliberate negligence or inaction on the part of the petitioner in prosecuting the suit and therefore he should be given opportunity to pursue the suit.

5. Per contra, Mr.Ashok Menon, learned counsel for the respondent submitted that there is absolutely no explanation for the delay in the affidavit filed in support of the petition and further the affidavit was not sworn by the party or the counsel who was appearing for the petitioner but it was sworn by the clerk of the counsel. Learned counsel further submitted that the trial court rightly dismissed the application which does not warrant interference by this court.

6. It is seen from the records that the petitioner is the ESI Corporation and the suit was filed for declaration and for consequential injunction. The injunction application filed by the petitioner was dismissed by the trial court and the appeal filed against the order in CMA No.133 of 2006 was disposed with a direction to the trial court to complete the trial within a period of three months. Again when the suit was taken up for trial, there was no representation for the petitioner and hence the suit was dismissed for non-prosecution.

7. As rightly contended by Mr.Ashok Menon, learned counsel for the respondent, the affidavit should have been sworn by the party or the counsel. Considering the nature of the prayer sought for in the suit and the length of delay, this court is inclined to condone the delay. However, in future, affidavits shall be sworn by the parties to the suits.

8. In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.542 of 2009 in O.S.No.1323 of 2005 is set aside and the suit is restored. The trial court is directed to dispose of the suit on merits, within a period of six months from the date of receipt of a copy of this order. No costs.

20.01.2015

Index : Yes/No
rgr

To

The VI Asst. Judge,
City Civil Court,
Chennai

K.KALYANASUNDARAM,J
rgr

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