

A.No.5761 of 2015
in
C.S.No.99 of 2013

G.CHOCKALINGAM, J.

This application has been filed by the applicant/defendant to condone the delay of 187 days in filing the petition to set aside the ex-parte decree dated 25.09.2014 passed in the above suit in C.S.No.99 of 2013.

2. Learned counsel for the applicant/defendant contended that the applicant has received a written notice dated 06.04.2015, and 10.04.2015 from the learned counsel for the respondent/plaintiff calling upon him to appear before the learned Master on 15.04.2015 in E.P.No.16 of 2015 in C.S.No.99 of 2013 stating that the respondent/plaintiff has obtained a decree in C.S.No.99 of 2013 and he also filed an Execution Petition in E.P.No.16 of 2015 for recovery of the amount due under the above decree in C.S.No.99 of 2013. The learned counsel further contended that the applicant/defendant could not appear before the learned Master on 15.04.2015, but however, he has filed vakalat on 17.04.2015, after verifying the fact that the suit has been decreed on 25.09.2014. The suit was decreed without serving

any notice or summons to the applicant/defendant. The applicant/defendant came to know about the decree obtained by the respondent/plaintiff only on receipt of the notice in the E.P.No.16 of 2015 on 10.04.2015 and thereafter, he has filed the application within 30 days from the date of knowledge. Hence, there is no delay in filing the application to set aside the ex-parte decree. Even then, this application is filed to condone the delay of 187 days in filing the petition to set aside the ex-parte decree under Order IX, Rule 13 CPC in abundant caution. The learned counsel for the applicant further contended that if this application is not allowed by condoning the delay of 187 days in filing the petition to set aside the ex-parte decree dated 25.09.2014, the applicant will be put to irreparable loss and hardship and hence, he prayed for allowing of the above said application.

3. Learned counsel for the respondent/plaintiff contended that the plaintiff has filed the above suit for recovery of a sum of Rs.1,10,06,000/- together with interest at the rate of 24% p.a. from the date of realization on the suit claim of Rs.80,00,000/-. Pending of the present suit, it is very well known to the applicant/defendant that he will settle the claim by disposing the property and also he knows

about the case. It is further contended by the learned counsel for the respondent/plaintiff that the applicant/defendant is in the habit of cheating the others and evading to pay the amount to the plaintiff and hence, he prayed for dismissal of the above application.

4. The main argument of the learned counsel for the applicant/defendant is that the applicant has not served with any notice or summons and that is why, he has no knowledge about the pendency of the case and he came to know about the case only after the receipt of notice in E.P.No.16 of 2015 in C.S.No.99 of 2013 on 10.04.2015.

5. On verification of entire bundles, it is seen that there is no suit summons was served upon the defendant in the suit. The summons sent through registered post was returned and subsequently, paper publication was ordered. The summons sent through paper publication were served only as substituted service. After effecting the paper publication, since summons were not duly served upon the defendant, the argument of the learned counsel for the applicant/defendant that he came to know about the suit proceedings only on 10.04.2015, i.e., after receiving notice in the E.P.No.16 of

2015 is acceptable one. Even though the learned counsel for the respondent/plaintiff contended that the applicant/defendant has knowledge about the pendency of the suit proceeding, to prove the same, there is no material produced on the side of the respondent/plaintiff. Hence, the argument of the learned counsel for the respondent/plaintiff that the applicant/defendant has knowledge about the suit proceedings is not at all acceptable one.

6. This Court is satisfied with the reasons stated in the affidavit filed in support of this application and hence, this application has to be allowed. Accordingly, this application is allowed and the delay of 187 days in filing the petition to set aside the ex-parte decree dated 25.09.2014 is condoned.

7. The Registry is directed to number the application filed to set aside the ex-parte decree dated 25.09.2014, within a period of three weeks from today, and list the same before the Court in usual course.

Jrl

06.11.2015

G.CHOCKALINGAM, J.

Jrl

Pre-Delivery order in

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