

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2885 of 2015 &

M.P.No.1 of 2015

Varatharajan

... Petitioner

v.

1.Teivachelvi
2.Rajkumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.03.2015 made in I.A.No.136 of 2014 in unnumbered A.S.No....of 2004 on the file of Principal District Court at Namakkal.

For Petitioner : Mr.T.L.Thirumalaisamy

O R D E R

The second defendant in O.S.No.293 of 2007 on the file of Sub Court, Namakkal has filed the above Civil Revision, challenging the the fair and decreetal order passed in I.A.No.136 of 2014 in unnumbered A.S.No....of 2004, on the file of Principal District Court, Namakkal.

2. The 1st respondent-plaintiff filed the suit in O.S.No.293 of 2007 for recovery of money. After contest, the suit was decreed on 28.11.2006. Thereafter, the 2nd defendants filed an application in I.A.No.136 of 2014, to condone the delay of 2685 days in preferring the first appeal. In the affidavit filed in support of the application, the 2nd defendant has stated that his brother, the 1st defendant, has not informed him about the decree passed in the suit, therefore, he could not file the appeal within the time. The 1st respondent filed his counter and opposed the application.

3. The Lower Appellate Court, after taking into consideration the case of both the parties, dismissed the application finding that the petitioner has not given sufficient cause for condoning the inordinate delay of 2685 days in filing the application.

4. It is pertinent to note that in the Execution Petition in R.E.P. No.85 of 2007, the petitioner and the 2nd respondent appeared through their counsel and also filed counter. However, they have not stated anything about the filing of the appeal before the Execution Court. Having appeared before the Execution Court and contested the Execution Petition, the petitioner cannot now contend that he was not aware of the decree passed in the suit. In the absence of sufficient cause shown by the petitioner, the inordinate delay of 2685 days cannot be condoned. The Lower Appellate court, taking into consideration all these aspects, rightly dismissed the application.

5. In these circumstances, I do not find any reason to interfere with the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

23.07.2015

Rj

To

The Principal District Court ,
Namakkal.

M. DURAISWAMY,J.,

Rj

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