

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) No.4153 of 2014andM.P.No.1 of 2014

S.Sankaran

...

Petitioner

Vs.

K.Vijayadoss

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and Decreetal order made in I.A.No.585 of 2013 in O.S.No.91 of 1999 dated 13.08.2013 passed by the Learned District Munsif, Ponneri, allowing the petition filed for condonation of delay of 2730 days in representing the petition to set aside the exparte decree dated 03.02.2005.

For Petitioner : Mr.G.Thangavel

For Respondent : Mr.K.Kannan

ORDER

The civil revision petition is filed against the order dated 13.08.2013 passed by the Learned District Munsif, Ponneri in I.A.No.585 of 2013 in O.S.No.91 of 1999.

2. The petitioner/plaintiff had instituted a suit in O.S.No.91 of 1999 against the respondent/defendant for declaration of title and for recovery of possession.

3. The defendant received summon in the suit and also filed his written statement on 05.02.2002. When the suit was taken up for trial, the defendant remained ex parte and the ex parte order was passed on 03.02.2005. On 03.03.2005, the defendant filed an application to set aside the ex parte decree. However, the petition was returned for rectifying some defects. That application was not re-presented in time and on the other hand, the respondent filed I.A.No.585 of 2013 to condone the delay of 2730 days in representing the application. The trial Court, having satisfied with the reason assigned in the affidavit, condoned the delay on payment of cost of Rs.2,500/-. Challenging the order, the present civil revision petition is filed.

4. Mr. G.Thangavel, learned counsel for the petitioner submitted that the respondent has not given valid reason for condoning the delay and the right of the petitioner is affected by allowing the application.

5. Mr.K.Kannan, learned counsel for the respondent submitted that the suit is for declaration of title and for recovery of possession of immovable property and the respondent is having valid defence in the suit. It is further contended that the trial Court has exercised its discretionary jurisdiction in condoning the delay only to afford an opportunity to the defendant to contest the suit.

6. It is seen that the trial Court has condoned the delay in representation by imposing cost of Rs.2,500/-. Admittedly, the respondent filed the petition in time and if there is any defect, the counsel for the respondent could have rectified and represent in time. It is settled law that for fault of the counsel, the parties should not be made to suffer. It is noted that the petitioner has instituted the suit for declaration of title and for recovery of possession. The trial Court has rightly exercised its discretionary jurisdiction in favour of the respondent in condoning the delay. Hence, I do not find any illegality or irregularity in the order impugned in this revision.

7. However, considering the inconvenience caused to the petitioner, the respondent is directed to pay an additional cost of Rs.15,000/- to the learned counsel for the petitioner on or before 23.02.2015. On such compliance, the trial Court shall dispose of the suit, on merits and in accordance with law, within a period of six months from the date of receipt of copy of this order.

With the above said directions, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2015

Index : Yes/No
Internet : Yes/No
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K.KALYANASUNDARAM, J.

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To
The Learned District Munsif, Ponneri,

C.R.P.(NPD) No.4153 of 2014
and
M.P.No.1 of 2014

22.01.2015