

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.4602 OF 2014
AND M.P.NO.1 OF 2014

R.Baskar ... Petitioner

Vs.

1.M/s.City Express
Rep. By Mr.Guhan Babu
No.101, Co-operative Colony,
TPN Petrol Bunk Back Side,
Mohanur Road,
Namakkal - 637 001.

2.Guhan Babu ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 18.06.2014 made in I.A.No.67 of 2013 in O.S.No.43 of 2011 on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondents : Mr.J.Nithyanandam

ORDER

This Civil Revision Petition is directed against the order dated 18.06.2014 passed in I.A.No.67 of 2013 in O.S.No.43 of 2011 by the learned Principal District Judge, Coimbatore.

2.The petitioner is the plaintiff in O.S.No.43 of 2011, which was filed against the respondents/defendants for permanent injunction restraining them from in any manner advertising and carrying on the business as Cargo Operator under the name “CITY” or any other identical or deceptively similar trade name or mark. The respondents did not contest the case and hence, an exparte decree was passed against them on 05.07.2011.

3.The respondents filed an application in I.A.No.67 of 2013 to condone the delay of 534 days in filing the petition to set aside the exparte decree contending that though the second petitioner engaged an advocate, he could not contact his counsel due to his illness of liver ailment. The Second respondent has stated that he was under constant medical care and was advised to take rest. The application was opposed by the petitioner stating that earlier the respondents filed an application through an advocate Mr.O.K.Thiruvankadam, but subsequently, they did not pursue the same and after entering in the

Execution Petition, the application in I.A.No.67 of 2013 was filed. The learned Principal District Judge, Coimbatore, condoned the delay by allowing the application on 18.06.2014. Challenging the order, the present Civil Revision Petition is filed.

4.Mr.V.M.G.Ramakkannan, learned counsel for the petitioner has submitted that the respondents are not diligent in defending their case and they had knowledge about the exparte decree earlier. However, without giving proper explanation, the application in I.A.No.67 of 2013 was filed.

5.Mr.J.Nithyanandam, learned counsel for the respondents has submitted that the petitioner has filed the suit alleging infringement of trade mark and the respondents should be given opportunity to defend their case. It is further submitted that the delay was not caused due to deliberate negligence and that the respondents have shown sufficient cause for condoning the delay.

6.The respondents have produced Exs.P1 and P2 to prove that the second respondent was taking treatment for liver ailment. The Trial Court, after considering the nature of suit and the length of delay had taken a lenient view to give opportunity to the respondents to defend their case. The discretionary jurisdiction exercised by the Trial Court in condoning the delay need not be

upset by this Court in exercising the revisional jurisdiction.

7.I do not find any merit in this Civil Revision Petition and accordingly, the same stands dismissed. However, considering the length of delay, the respondents are directed to pay additional cost of Rs.5,000/- to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. On such compliance, the learned Principal District Judge, Coimbatore, shall dispose of the suit, as expeditiously as possible, preferably within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.01.2015

Index : Yes/No
Internet : Yes/No
TK

To

The Principal District Judge
Coimbatore.

K.KALYANASUNDARAM, J.

TK

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