

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2015

Coram

The Hon'ble Mr. Justice **M.DURAISWAMY**

C.R.P. No.1702 of 2015

and

M.P.No.1 of 2015

1.M/s.Shree Rajeswari Mills Ltd.,
Registered Office, Railway Station Road,
Gudiyattam – 632 602,
Vellore District.

2.M/s.Shree Rajeswari Mills Ltd.,
B Unit, Thennankudi,
Thirunallar, Karaikal,
Pondicherry State.

.. Petitioners

Vs

M/s.Moorthy Associates rep. By
Partner P.N.Pasupathy

.. Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order and decree made in I.A.No.3 of 2014 in O.S.No.399 of 2014 dated 29.01.2014 on the file of I Additional District and Sessions Judge, Tiruppur.

For Petitioners

..

Mr.K.A.Ravindran

For Respondent

..

Mr.S.Mukunth

for M/s.Sarvabhauman Associates

ORDER

Challenging the final and fair order passed in I.A.No.3 of 2014 in O.S.No.399 of 2004 on the file of the I Additional District and Sessions Court, Tiruppur, the defendants have filed the above Civil Revision Petition.

2.The plaintiff filed a suit in O.S.No.399 of 2014 for recovery of money. The defendants filed the written statement and were not contesting the suit. Thereafter, on 14.03.2011, since the defendants failed to appear before the Trial Court, the Trial Court passed an exparte decree as against them. Thereafter, the defendants filed an application in I.A. No.3 of 2014 to condone the delay of 548 days in filing the application to set aside the exparte decree dated 14.03.2011. In the affidavit filed in support of the application, in para 2, the defendants have stated as follows:

"2.I further submit that the respondent has filed the above said suit as against us for recovery of money and I have also received summons from the court and engaged an advocate at Coimbatore and the said suit was posted on 14.03.2011. In the meanwhile my father Thiru.M.G.Amirthalinga Mudaliar, Managing Director of the

company was suddenly died and subsequently my wife S.Banumathi also died and due to the sudden death in family, we could not concentrate in any of the matter. In the meanwhile this Hon'ble Court passed an exparte decree against us on 14.03.2011. We came to know about the exparte decree are before 5 days after receiving notice from execution side. Our absence on that day is neither wilful nor wanton. There is no wilful default on our side. Hence I am filing this application to condone the delay of 548 days for filing the application to set aside the exparte decree passed against us on 14.03.2011. Otherwise I would put to great hardship and loss. If the petition is allowed, there is no prejudice cause to other side."

3.From a reading of the averments stated in para 2, it is clear that the defendants have not given any details with regard to the death of M.G.Amirthalinga Mudaliar and S.Banumathi. The defendants, without giving any details with regard to the death of M.G.Amirthalinga Mudaliar and S.Banumathi, simply stated that they had died. Therefore, they could not appear before the Trial Court for filing an application in time. The reasons given by the defendants in

para 2 cannot be acceptable. The case of the defendants was also disputed by the plaintiff in their counter.

4. On a perusal of the materials available on record, it is clear that the suit was filed in the year 2004 and after a lapse of 9 years, the suit was taken up for trial and even then the defendants remained absent and an ex parte decree was passed on 14.03.2011. The Trial Court took note of the averments stated in the affidavit filed in support of the application and while dismissing the application observed that the defendants have not given the date of death of M.G. Amirthalinga Mudaliar and S. Banumathi in the affidavit. In the absence of any acceptable reason given by the defendants, the Trial Court has dismissed the application.

5. The revision petitioners/defendants today filed an affidavit narrating the reasons for the delay which cannot be accepted at this stage after the dismissal of the application before the Trial Court. The defendants have filed the above Civil Revision Petition challenging the said order and now they have narrated the reasons for the delay in the affidavit filed before this Court today. Since the details were not given before the Trial Court, the Trial Court has rightly dismissed the application. The defendants cannot improve upon their case now by

filing an affidavit before this Court. In these circumstances, the Trial Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2015

Index:Yes/No
mmi

To

The I Additional District and Sessions
Judge, Tiruppur.

M.DURAISWAMY, J.

C.R.P. No.1702 of 2015

22.06.2015