

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.8.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.(NPD)No.3400 of 2015 &

M.P.No.1 of 2015

K.P.Ganapathi
Petitioner

...

v.

M.Murugesan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 02.07.2015 made in I.A.No.299 of 2014 in O.S.No.104 of 2011 on the file of Subordinate Judge, Harur.

For Petitioner : Mr.G.Arul Murugan

O R D E R

The revision petitioner is the plaintiff in O.S.No.101 of 2011 on the file of Sub Court, Harur. The respondent herein is the plaintiff sole defendant. The suit is for recovery of Rs.2,01,500/-.

2. The respondent was set *exparte* on 12.6.2012 and thereafter,

exparte decree dated 21.07.2012 was passed. The revision petitioner sent a notice 05.08.2013 about the *exparte* decree and demanded to pay the amount as per the *exparte* decree.

3. The respondent sent a reply dated 12.8.2013 that he was taking steps to set aside the *exparte* decree. But no steps was taken by the respondent as stated in the reply dated 12.8.2013.

4. Hence, the revision petitioner filed E.P.No.21 of 2014 for recovery of the decretal amount. On getting notice from the EP, the respondent herein filed I.A.No.299 of 2014 to condone the delay of 697 days in filing the application to set aside the *exparte* decree. This application in I.A.No.299 of 2014 was filed on 17.6.2014. Ultimately, in I.A.No.299 of 2014 in O.S.No.104 of 2011 four documents were marked on the side of the revision petitioner. They are as follows:

Ex.R.1 is the notice dated 05.08.2013 sent by the revision petitioner to the respondent;

Ex.R.2 is the reply dated 12.8.2013 to the aforesaid legal notice.

Ex.R.3 is the second reply dated 18.9.2013 of the respondent.

Ex.R.4 is the acknowledgment for the receipt of Ex.R.1.

5. The aforesaid facts are not disputed by the respondent and the Trial Court also took note of the said facts. However, in order to give an opportunity to the respondent, the Trial Court passed an order dated 02.07.2015 allowing I.A.No.299 of 2014 in O.S.No.104 of 2011 on condition that the respondent shall pay Rs.2000/- as cost. The revision petitioner is against the aforesaid order.

6. Heard the learned counsel for the petitioner.

7. The learned counsel for the petitioner submitted that the aforesaid narration of facts makes it clear that the Trial Court ought not to have condoned the delay and the Trial Court ought to have passed a conditional order to deposit atleast a portion of the amount claimed by the revision petitioner.

8. I have considered the submissions made by the learned counsel for the petitioner.

9. The aforesaid facts makes it clear that the respondent took dilatory tactics. He was very well aware about the *exparte* proceedings since he received notice dated 05.08.2013 and infact the respondent

issued reply. In spite of it, he did not take action to set aside the *ex parte* order. He filed application to set aside the *ex parte* order only when the execution petition was filed. This action of the respondent is deprecatory. However, in order to give an opportunity, the Trial Court thought to condone the delay.

10. In such circumstances, I am not inclined to interfere with the order of the Trial Court, but a direction is issued to the Trial Court to conclude O.S.No.104 of 2011 and pass final Judgment and Decree within a period of four months from the date of receipt of a copy of this order.

11. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

20.8.2015

kua

To
The Subordinate Judge, Harur

Note: Issue order copy on 25.8.2015

D.HARIPARANTHAMAN,J.,

kua

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M.P.No.1 of 2015

20.8.2015