

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4756 of 2015
and M.P.No.1 of 2015

K. Mani

.... Petitioner

vs

P. Subramani

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.11.2015 made in I.A.No.835 of 2015 in O.S.No.340 of 2012 on the file of District Munsif Court, Kangayam.

For Petitioner : M/s D. Gopal and D. Raghu
For respondent : Mr.V. Regunathan

ORDER

Challenging the fair and final order passed in I.A No.835 of 2015 in O.S No.340 of 2012 on the file of District Munsif Court, Kangayam, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.340 of 2012 for recovery of money. Since the defendant failed to appear before the trial Court, he was set ex-parte and an ex-parte decree was passed on 7.6.2013. The defendant filed an application in I.A.No.835 of 2015 to condone the delay of 695 days in filing the petition to set aside the ex-parte decree dated 7.6.2013.

3. In the affidavit, filed in support of the petition, the defendant has stated that he was suffering from Jaundice and as per Doctor's advise, he took bed rest and hence he has not filed the application to set aside the ex-parte decree in time. Further, the defendant has stated that he came to know about the ex-parte decree, passed in the Suit, only when he met his counsel. The plaintiff filed counter and opposed the petition.

4. The trial Court, taking into consideration of both the parties, dismissed the application, finding that, earlier, the defendant has filed an application in I.A.No.479 of 2014 to condone the delay of 236 days in filing the petition to set aside the exparte decree, passed on 7.6.2013, which was withdrawn by him. With regard to filing of the

earlier application in I.A.No.479 of 2014, the defendant has not stated a single word in the affidavit, filed in support of the petition. The defendant has suppressed the fact with regard to the filing of the earlier application in I.A.No.479 of 2014.

5. The learned counsel appearing for the petitioner submitted that the erstwhile counsel, who was appearing for the defendant, has withdrawn the application without instruction of the defendant. However, the said contention was not raised in the affidavit, filed in support of the petition, which would clearly establish that the defendant has suppressed the filing of the earlier application in I.A.No.479 of 2014.

6. That apart, the reasoning given by the defendant that he was suffering from jaundice and therefore, he could not file the application in time, cannot be accepted for the reason that the averments are very bald and bereft of details.

M. DURAISWAMY,J.,

sr

7. In these circumstances, the trial Court has rightly dismissed the application in I.A.No.835 of 2015 in O.S.No.340 of 2012 and I do not find any error or irregularity in the order passed by the trial Court and hence the Civil Revision Petition is liable to be dismissed as devoid of merits. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

21-12-2015

sr

Index:no
website:yes

To

The District Munsif Court, Kangayam.

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