

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.481 OF 2015
AND M.P.NO.1 OF 2015

Mohan ... Petitioner

Vs.

1.Mani
2.Rajeswari
3.Kamavel ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 14.10.2014 passed in I.A.No.172 of 2013 in O.S.No.112 of 2011 on the file of the Learned Additional District Munsif, Cuddalore.

For Petitioner : Mr.S.Rajagopal

ORDER

This Civil Revision Petition is directed against the order dated 14.10.2014 passed in I.A.No.172 of 2013 in O.S.No.112 of 2011 by the learned Additional District Munsif, Cuddalore.

2.The petitioner is the plaintiff in O.S.No.112 of 2011 on the file of

the District Munsif, Cuddalore. The suit was filed against the respondents/defendants for declaration of title and for consequential permanent injunction. The defendants were set exparte and an exparte decree was passed on 24.07.2012.

3. Thereafter, the defendants filed an application in I.A.No.172 of 2013 to condone the delay of 176 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the application, the defendants have averred that their counsel was suffering from diabetes and underwent operation. It is further averred that they were under the impression that their counsel is looking after the case and that they did not receive any communication from him and they were waiting for a communication from their counsel. The third defendant has further stated that he was doing business and moving around Andhra Pradesh, Karnataka and Kerala.

4. The application was opposed by the petitioner stating that the defendants have not shown sufficient cause for condoning the delay. The third defendant has given evidence as P.W.1. to substantiate the averments contained in the affidavit. The petitioner herein was examined as R.W.1 and also examined Mr.V.Dakshinamoorthy, advocate as R.W.2 and produced Ex.R1.

5.R.W.2 who was appearing for the defendants has stated that the defendants did not meet him to file their written statement. R.W.2 has also denied the ailment alleged by the defendants in the affidavit. R.W.2 has not produced any material to show that he has intimated about the stage of the case to the defendants. The Trial Court, after considering the evidence of P.W.1, R.W.1 and R.W.2 has held that the defendants have shown sufficient cause for condoning the delay.

6.The petitioner herein has filed the suit for declaration and permanent injunction. I am of the considered view that the respondents herein should be given opportunity to contest the case. The Trial Court has rightly allowed the application, which does not warrant interference by this Court.

7.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2015

Index : Yes/No
Internet : Yes/No
TK

To

The Additional District Munsif

Cuddalore.

K.KALYANASUNDARAM, J.
TK

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