

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1798 of 2016

&

C.M.P.No.13320 of 2016

Dr.J.Murali Manohar ... Appellant /1st Defendant

Versus

1. Vijay Krishnan
D 19105, Braemen Road,
Northridge, C.A.91326,
U.S.A., Rep. by his Power Agent,
Mr.Pattabhi,
No.260, Poonamallee High Road,
Chennai. ... 1st Respondent/Plaintiff

2. M/s.CEE (I) Entertainment Ltd.,
No.9E, Vee Gee Emerald,
No.312, Valluvar Kottam High Road,
Nungambakkam, Chennai-600 034.
... 2nd Respondent/2nd Defendant

Prayer in both appeals: Civil Miscellaneous Appeals filed under Order XLIII Rule 1(c) of Code of Civil Procedure praying to set aside the fair and decretal order dated 10.06.2016 in I.A.No.67 of 2016 in I.A.No.68 of 2014 in O.S.No.9930 of 2010 on the file of the XVIII Additional District Judge, City Civil Court, Chennai and consequently, allow the said I.A.No.67 of 2016.

For Appellant : Mr.T.Saikrishnan
for M/s.Sai, Bharath & Ilan

For Respondents : Mr.R.Manohar for R1/Caveator

J U D G M E N T

The present Civil Miscellaneous Appeal has been directed against the impugned decretal order dated 10.06.2016 passed in I.A.No.67 of 2016 in I.A.No.68 of 2014 in O.S.No.9930 of 2010 (C.S.No.213 of 2008) on the file of the XVIII Additional District Judge, City Civil Court, Chennai.

2.Learned counsel for the appellant would submit that the suit was filed in C.S.No.213 of 2008 seeking judgment and decree for recovery of a sum of Rs.17 lakhs together with interest at the rate of 18% p.a. from the date of plaint till

the date of realization and for costs, and the same was transferred to the file of XVIII Additional District Judge, City Civil Court, Chennai. Subsequently, there were no issuance of any summons, however, the plaintiff on the basis of the publication saying that the defendant / appellant was duly served to proceed with the pending suit, an ex parte decree was passed on 31.01.2011. Only after the suit was decreed, EP was filed and notice was issued, accordingly, the appellant/1st defendant had received a summon on 15.02.2013 from the Execution Court. But in the mean while, it is pleaded, he was having one another case pending in Singapore first and he was directed to prosecute the case in Singapore and subsequently, he also fell ill in the month of May, 2014. In view of all these difficulties which is beyond his control, he filed an application for restoration of the suit with a petition for condoning the delay of 970 days in I.A.No.68 of 2014 seeking to set aside the exparte order passed against the appellant in O.S.No.9930 of 2010. But the said application was also dismissed on 05.07.2014 for non-prosecution and failure to pay batta to the plaintiff. Thereafter, he has also filed one another application in I.A.No.67 of 2016 on 16.03.2016, for restoration of dismissal of I.A.No.68 of 2014. The learned Court below wrongly dismissed the I.A.No.68 of 2014 on the terms that the appellant had not filed any application for condoning the delay of 561 days for restoration. Since the appellant has got a fair chance of success in the main suit for restoration, no cause of action has arisen and the plaintiff can never take up the case on merits as the defendant was not ready to pay any amount whatsoever to the plaintiff. Adding further, it is contested that the learned Court below has miserably failed to consider the merits of the matter and only on technical ground, the application to restore the suit has been repeatedly dismissed by applying unsound reasons. He would further submit that to show his bona fide, he is preferred to deposit 25% of the suit amount and the same can be kept pending till the disposal of the suit. On this basis, he prayed for setting aside the impugned order.

3.Per contra, the learned counsel for the respondent/plaintiff would submit that when the suit was filed seeking recovery of money along with the interest at the rate of 18% p.a., the defendant has never taken any steps whatsoever to co-operate with the plaintiff for disposal of the pending suit on merits. Finally, for the reason that no one has represented for the defendant, the learned Trial Court proceeded against the appellant on 31.01.2011 and passed an exparte decree. Keeping quite for a long time, when there was no response from the defendant, EP was also filed. After issuance of summons by the Executing Court, which is also admitted by the appellant/defendant that he has received summons from the Executing Court on 15.02.2013, the defendant has filed the petition belatedly to set aside the exparte decree. At least from the date of receipt of summons from the Execution Court, he could have approached the Court by moving appropriate application, which he has not done. However, he

has come up with huge delay of 970 days in filing I.A.No.68 of 2014 to set aside the exparte decree passed against him in O.S.No.9930 of 2010, wherein also he has not shown any interest. Therefore, the application in I.A.No.68 of 2014 was also dismissed on 05.07.2014 for non-prosecution and failure to pay batta against the appellant/defendant. Instead of filing the application for restoration of dismissal of the application in I.A.No.68 of 2014 within 30 days from the date of dismissal, i.e. on or before 05.08.2014, he has filed yet another application in I.A.No.67 of 2016 only on 16.03.2016 with inordinate and huge delay of 562 days. This was rightly brought to the notice of the Court below for considering three vital aspects. Firstly, the appellant/defendant has deliberately kept out of Court proceedings, as a result, he has invited an exparte decree on 31.01.2011. Secondly, even after receipt of summons on 15.2.2013 in E.P., he has further delayed the matter, without approaching the Court immediately, thus, there was huge delay of 970 days in filing the I.A.No.68 of 2014 for filing restoration and again on failure to pay batta, the said petition was dismissed for non-prosecution. On three grounds, the learned Court below has rightly dismissed the application for restoration of the application in I.A.No.68 of 2014. Therefore, when there has been a long delay for which no explanation whatsoever has been furnished, the present appeal filed challenging the correctness of the order dated 10.06.2016, is only to drag on the case hence the same liable to be dismissed.

4.I fully agree with the arguments advanced by the learned counsel for the respondent/plaintiff.

5.As mentioned above, when the plaintiff filed a suit for recovery of a sum of Rs.17 lakhs with interest at the rate of 18% p.a., it was proceeded ex parte against the appellant/defendant on 31.01.2011. Subsequently, the respondent/plaintiff has proceeded for executing the same, by approaching the Executing Court. Summons were issued on 15.02.2013. It has been admitted by the appellant/defendant that he has received the summons but belatedly he has taken out an application in I.A.No.68 of 2014, to condone a huge and unexplained delay of 970 days. However, the learned Court below after receiving the application, has given three chances to the appellant/defendant to pay batta to the plaintiff, For the reasons best known to him, unfortunately, the appellant / defendant has miserably failed to make use of all chances, as a result, the application in I.A.No.68 of 2014 was dismissed by order dated 05.07.2014.

6.Even after that the appellant/defendant had kept quite for a long time and he has moved an application namely I.A.No.67 of 2016 with a delay of 561 days to condone the same. As per Article 122 of Limitation Act, he should have taken out an application within 30 days from the date of dismissal, but he has not done so. Thereafter, he has moved an application to condone the delay of 561 days in I.A.No.67 of 2016 dated 16.03.2016, which is barred by limitation.

Hence, the trial Court dismissed the same. I do not find any infirmity in the impugned order. This appellant is a defendant in a money suit before the trial Court. Repeatedly causing delay of 970 days in the first occasion and another delay of 561 days in the second occasion, gives a clear picture to this Court that he is a skilful litigant in delaying tactics to avoid final adjudication. Therefore, this Court is not able to find any merit in this appeal. Accordingly, the appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The XVIII Additional District Judge,
City Civil Court, Chennai
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s.Sai, Bharath & Ilan, Advocate, S.R.No.59082
+lcc to Mr.R.Manohar, Advocate, S.R.No.58935

C.M.A. No.1798 of 2016
&
C.M.P.No.13320 of 2016

KJI (CO)
CA(20/12/2016)

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