

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1286 of 2014

and M.P.Nos.1 and 2 of 2014

G. Syed Fazullah
rep by his Power of Attorney,
Mrs.Najamunnisa

... Petitioner

vs

1. Thameem Basha
2. K. Somasundaram

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 05.9.2013 in I.A.No.17 of 2013 in O.S.No.11778 of 2010 on the file of XVIII Additional City Civil Court, Chennai,

For Petitioner : Mr.V. Raghavachari

For respondents : M/s Giridhar and Sai

ORDER

Challenging the fair and final order passed in I.A.No.17 of 2013 in O.S.No.11778 of 2010 on the file of XVIII Additional City Civil Court, Chennai, the 2nd defendant has filed the above Civil Revision Petition.

2. The plaintiff has filed a suit in O.S.No.11778 of 2010 for specific performance and also the consequential relief. Since the petitioner/2nd defendant did not appear before the trial court, the trial court passed an ex-parte decree on 14.6.2011. Thereafter, the 2nd defendant filed an application in I.A.No.17 of 2013 to condone the delay of 568 days in filing the petition to set aside the ex-parte decree. In the affidavit, filed in support of the petition, the 2nd defendants has stated that due to the frequent travel to Dubai, the petitioner could not follow with the counsel regarding the status of the suit and he was not informed about the exparte decree, passed by the trial Court by his counsel and therefore, he could not file the application to set aside the exparte decree in time. The plaintiff filed counter and opposed the petition.

3. The trial Court, taking into consideration of both the parties, dismissed the application finding that no valid reason

assigned in the petition for the delay of 568 days and the reasons stated in the affidavit was not proved by the petitioner and dismissed the petition.

4. Mr.Giridhar, learned counsel appearing for the 1st respondent has no objection for condoning the delay of 568 days and allowing the Civil Revision Petition. The learned counsel also submitted that the 1st respondent has objection for allowing the application, filed by the petitioner/2nd defendant under Order 9 Rule 13 of Civil Procedure Code also.

5. In these circumstances, the fair and decreetal order passed in I.A.No.17 of 2013 in O.S.No.11778 of 2010 on the file of XVIII Additional City Civil Court, Chennai are set aside. The application in I.A.No.17 of 2013 stands allowed.

6. The trial court is directed to number the application, filed by the 2nd defendant, under Order 9 Rule 13 of Civil Procedure Code. Since the learned counsel for the 1st respondent has no objection for ordering the application under Order 9 Rule 13 of Civil Procedure Code, the trial court is directed to allow the application, filed by the 2nd defendant, under Order 9 Rule 13 of Civil Procedure Code and after

allowing the application and setting aside the exparte decree passed in the suit in O.S.No. 11778 of 2010, the trial court is directed to dispose of the suit, on merits and in accordance with law, within a period of three months from the date of allowing the application, filed under Order 9 Rule 13 of Civil Procedure Code.

7. Mr.V. Raghavachari, learned counsel for the petitioner/2nd defendant submitted that the petitioner would deposit the monthly rent, collected from 16 tenants amounting to Rs.42,000/- the credit of O.S.No. 11778 of 2010 till the disposal of the suit.

8. The successful party shall withdraw the amount, to be deposited by the petitioner/2nd defendant, to the credit of the suit in O.S.No.11778 of 2010, after disposal of the suit.

9. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected MPs are closed.

25-01-2016

sr

Index:no
website:yes

To

The XVIII Additional City Civil Court, Chennai,

M. DURAISWAMY,J.,

Sr

CRP(NPD)No.1286/2014

25-01-2016