

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.292 of 2014
and M.P.No.1 of 2014 and
M.P.No.1 of 2015

Dharanidharan

.... Petitioner

vs

Balasubramanian

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order and decretal order dated 7.11.2013 passed by the Additional District Munsif, Chidambaram in I.A.No.329 of 2012 in O.S.No.296 of 2010.

For Petitioner : Mr.V. Chandrakanthan

For respondent : Mr.T. Arockia Dass

ORDER

Challenging the fair and decreetal order, passed in I.A.No.329 of 2012 in O.S.No.296 of 2010, on the file of Additional District Munsif, Chidambaram, the first defendant has filed the present Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.296 of 2010 for declaration and permanent injunction. The first defendant filed his written statement and was contesting the suit. Subsequently, when the matter was taken up for trial, since the first defendant remained absent on 28.9.2011, he was set ex-parte and an ex-parte decree was passed on 28.9.2011. Thereafter, the first defendant filed an application in I.A.No.329 of 2012 to condone the delay of 149 days in filing the petition to set aside the ex-parte decree.

3. In the affidavit, filed in support of the petition, the first defendant has stated that he was suffering from Jaundice and had undergone treatment for six months for the ailment. The plaintiff filed his counter and disputed the averments stated in the affidavit, filed in support of the petition. The trial Court disbelieved the case of the first

defendant and dismissed the petition.. Aggrieved over this order, the first defendant has filed the above Civil Revision Petition.

4. Since the first defendant has stated that he was suffering from jaundice and was taking treatment for ailment, in the interest of justice, the trial Court could have condoned the delay and permitted the first defendant to contest the suit on merits. Further, the plaintiff has filed the suit for declaration and permanent injunction. Therefore, in the interest of justice, I am of the view that the delay can be condoned on payment of cost.

5. Accordingly, the delay of 149 days in filing the petition to set aside the ex-parte decree is condoned on condition that the first defendant paying a sum of Rs.2,500/-(Rupees two thousand five hundred only) to the plaintiff within a period of two weeks from the date of receipt of copy of this order.

6. In these circumstances, the fair and decreetal order passed in I.A.No.329 of 2012 in O.S.No.296 of 2010 are set aside and the application in I.A.No.329 of 2012 stands allowed.

7. It is made clear that the revision petitioner/first defendant is at liberty to pay the sum of Rs.2,500/-(Rupees two thousand five hundred only) to the counsel appearing for the respondent in the Civil Revision Petition before this Court within a stipulated time.

8. With the above observation, the Civil Revision Petition is allowed.

M.P.No.1 of 2015 has been filed by the third party petitioner to get himself impleaded in the Civil Revision Petition.

9. According to the petitioner, he is a proper and necessary party. However, the respondent/plaintiff submitted that he is not a proper and necessary party for the proper adjudication of the matter.

10. Since I am setting aside the order passed by the trial Court, I do not find any reason to entertain the petition. Therefore, the petition is closed. However, it is open to the petitioner to file appropriate application before the trial Court to get himself impleaded

and in the event of the petitioner filing the application before the trial Court, the trial Court shall decide the same on merits and in accordance with law, after hearing both sides.

06-1-2016

sr

Index:no
website:yes

To
The Additional District Munsif, Chidambaram

M. DURAISWAMY,J.,

sr

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