

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.39 of 2014
and
M.P.No.1 of 2014

Nalani

... Petitioner

vs

Srinivasan

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the judgment and decreetal order in I.A.No.126 of 2013 in O.S.No.159 of 2010 dated 26.07.2013 on the file of Subordinate Court, Hosur.

For Petitioner : Mrs.Sri Priya for
Mr.V. Raghavachari

For respondent : Mr.D. Ramesh Kumar

ORDER

Challenging the the fair and final order passed in I.A.No.126 of 2013 in O.S.No.159 of 2010 on the file of Subordinate Court, Hosur, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff has filed a suit in O.S.No.159 of 2010 for partition. Since respondent, who is the first defendant in the suit, remained absent before the trial Court, an ex-parte decree was passed on 04.02.2011. Thereafter, the first defendant filed an application in I.A.No.126 of 2013 to condone the delay of 726 days in filing the application to set aside the ex-parte decree.

3. In the affidavit, filed in support of the petition, in paragraph-3, the petitioner has stated that he came to know about the ex-parte decree only when he received notice in the final decree application in I.A.No.115 of 2012 and after receipt of the same, he approached his previous counsel and shown the same to him. Since the previous counsel returned the bundle stating that he is busy in other work and advised him to engage some other counsel, he engaged Mr.M. Jeevanandam to defend his case. Subsequently, the said counsel also returned the papers to the first defendant, informing him that he was representing the Government and therefore, he has no time to conduct his case. Thereafter, he engaged the present counsel, who, on verification, informed him that the suit was decreed on 04.02.2011 itself. Hence the first defendant has filed the application

to condone the delay of 726 days in filing the application to set aside the ex-parte decree.

4. The averments stated in the affidavit were disputed by the plaintiff in her Counter.

5. The trial Court, taking into consideration the averments stated in the affidavit, filed in support of the petition, condoned the delay of 726 days on payment of cost of Rs.4,000/-.

6. The learned counsel appearing for the respondent/first defendant submitted that the said amount of Rs.4,000/ has been deposited to the credit of the suit before the trial Court. In paragraph-5 of the affidavit, the trial Court has gone into the averments stated in the written statement.

7. The learned counsel, appearing for the petitioner submitted that since the first defendant has filed the written statement along with the application to set aside the exparte decree, the trial Court should not have gone into the averments stated in the written statement, which has not yet been taken on record by the trial Court.

8. Since the first defendant has satisfactorily explained the reasons for the delay in the affidavit, filed in support of the petition, the trial Court had rightly allowed the application. I do not find any error or irregularity in the order passed by the trial Court.

9. It is also pertinent to note that when the first defendant has filed the written statement along with the application to set aside the ex-parte decree, the trial Court should not have gone to the averments stated in the written statement. The trial Court is directed to dispose of the application, filed under Order 9 Rule 13 of the Civil Procedure Code, at the earliest. With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

06-10-2016

sr

Index:yes/no
website:yes/no

To

The Subordinate Court, Hosur.

M. DURAISWAMY,J.,

sr

CRP(NPD)No.39 of 2014

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