

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4419 of 2014 &
M.P.Nos.1 of 2014 & 1 of 2015

P.Sudakaran

... Petitioner

v.

P.Thanupillai

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 08.02.2012 made in I.A.No.117 of 2009 in O.S.No.292 of 2006 on the file of Additional District Munsif, Alandur.

For Petitioner : Mr.S.Sathyaraj

For respondent : Mr.P.Selvaraj

ORDER

Challenging the fair and final order passed in I.A.No.117 of 2009 in O.S.No.292 of 2006 on the file of Additional District Munsif Court, Alandur, the defendant, has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.292 of 2006 for recovery of money.

3. Since the defendant failed to appear before the Trial Court, the Trial Court set him exparte and passed an exparte decree on 02.08.2007. Thereafter, the defendant filed an application in I.A.No.117 of 2009 to condone the delay of 364 days in filing the application to set aside the exparte decree dated 02.08.2007. The plaintiff filed his counter and contested the application. Subsequently, the application in I.A.No.117 of 2009 was dismissed by the Trial Court for non-payment of batta. Thereafter, the defendant filed an application in I.A.No.1705 of 2010 to set aside the order of dismissal and to restore the application in I.A.No.117 of 2009. The Trial Court, allowed the application on 11.11.2010. Subsequently, the said application was dismissed for non prosecution on 6.1.2011 and the defendant filed an application in I.A.No.1655 of 2011 to condone the delay of 186 days in filing the application to restore the application in I.A.No.117 of

2009. The Trial Court allowed the application on 8.9.2011. Subsequently, the plaintiff entered appearance and filed his counter and contested the application. In the affidavit filed in support of the application, the defendant has stated that due to ill-health he could not travel long distance hence, he could not appear before the Trial Court. However, to substantiate the said contention, the defendant has not produced any medical certificate. The Trial Court, taking into consideration the case of both the parties, dismissed the application finding that the defendant has not chosen to file written statement along with the present application and the application has been dismissed for default twice and that pursuant to the decree passed in O.S.No.292 of 2006, the plaintiff also filed an Execution petition in E.P.No.19 of 2009 and the Execution Court also ordered attachment of salary.

4. Though the Trial Court dismissed the application on 8.02.2012, the present Civil Revision Petition was filed only in November 2014. The conduct of the party would clearly establish that the defendant was not diligent in prosecuting the matter in a proper manner. Though the suit was filed in the year 2006, the same has not reached the finality till this date. In these circumstances, the Trial Court has rightly dismissed the application.

5. I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No

costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

04.01.2016

Rj

To

The Additional District Munsif,
Alandur.

M. DURAISWAMY,J.,

Rj

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