

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.1221 of 2015 &
M.P.No.1 of 2015

Natarajan

... Petitioner

v.

IPalanisamy

... Respondent

Civil Revision Petition filed under section 115 of the Civil Procedure Code against the fair and decreetal order dated 25.3.2014 passed in I.A.No.422 of 2013 in O.S.No.7 of 2011 on the file of Principal District Court at Namakkal.

For Petitioner : Mr.V.K.Vijayaraghavan

For Respondent : Mr.N.Manokaran

O R D E R

Challenging the fair and decreetal order passed in I.A.No.422 of 2013 in O.S.No.7 of 2011 on the file of Principal District Court, Namakkal, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.7 of 2011 for recovery of a sum of Rs.10,00,378 (Rupees ten lakhs three hundred and seventy eight only) together with interest.

3. The defendant entered appearance through a counsel and sought time for filing written statement.

4. The Trial Court, adjourned the matter on 27.4.2011, 16.6.2011, 14.7.2011, 10.8.2011, 8.9.2011 and on 29.9.2011 for filing written statement. In spite of the repeated adjournments, since the defendant failed to file the written statement and that his counsel reported no instructions, the Trial Court, set him ex-parte and an ex-parte decree was passed on 10.01.2012.

5. Thereafter, the defendant filed an application in I.A.No.422 of 2013 to condone the delay of 569 days in filing the application to set aside the ex-parte decree. In the affidavit filed in support of the application, the

defendant has stated that his counsel had instructed him to contact him as and when he inform him and that his counsel did not inform him as to when he could come and meet him for filing the written statement. Further, the defendant has stated that he came to know about the ex-parte decree passed in the suit when he received a notice in the Execution Petition in R.E.P.No.73 of 2013. The defendant has also stated that due to his pre-occupation in the employment, he was not in a position to contact his counsel immediately and file an application to set aside the ex-parte decree, hence, there is a delay of 569 days in filing the application.

6. When the defendant had entered appearance through his counsel and took time for filing written statement on six occasions, he cannot blame his counsel for not informing him about the ex-parte decree. Since the defendant did not turn up for filing written statement, his counsel had reported no instructions. In the counter filed by the plaintiff, he has stated that the defendant was attending the court on every hearing and that he was well aware of the proceedings pending before the Trial Court and also the ex-parte decree passed in the suit.

7. Since the defendant has not given any acceptable reason for condoning the delay, the Trial Court has rightly dismissed the application.

8. It is settled position that in the absence of sufficient cause shown by a party, the delay should not be condoned.

9. In the case on hand, the defendant has not given sufficient cause for condoning the inordinate delay of 569 days in filing the application to set aside the ex-parte decree.

10. In these circumstances, 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 petition is closed.

20.06.2016

Index : Yes/No

Rj

To

The Principal District Court,
Namakkal,

M. DURAISWAMY,J.,

Rj

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