

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.1826 of 2015

and

M.P.No.1 of 2015

1. Poongothai

2. Selvaraj

... Petitioners

vs

1. Ponnammal

2. Manivel

.... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order of the Principal District Munsf Court, Kallakurichi dated 04.03.2014 in I.A.No.2019 of 2013 in O.S.No.291 of 2011.

For Petitioners : Mr.P. Rajavel

For respondents : Mr.P. Valliappan

ORDER

Challenging the fair and final order passed in I.A.No.2019 of 2013 in O.S.No.291 of 2011 on the file of Principal District Munsif Court, Kallakurichi, the defendants have filed the above Civil Revision

Petition.

2. The plaintiffs filed the suit in O.S.No.291 of 2011 for permanent injunction. Since the defendants have not filed their written statement, they were set ex-parte and an ex-parte decree was passed on 22.11.2011. Thereafter, the defendants filed an application in I.A.No.2019 of 2013 to condone the delay of 595 days in filing the application to set aside the ex-parte decree dated 22.11.2011.

3. In the affidavit, filed in support of the petition, the defendants have stated that the first plaintiff's husband Narayanasamy has filed a suit in O.S.No.780 of 1988 on the file of Principal District Munsif Court, Kallakurichi and the same was dismissed on 23.07.1993. Further the defendants have stated that as against the judgment and decree passed in the suit in O.S.No.780 of 1988, the plaintiffs filed an appeal in A.S.No.238 of 1998 and the same was dismissed on 11.12.2003. Further, the defendants have stated that suppressing the earlier proceedings, the plaintiffs have filed the present suit in O.S.No.291 of 2011. In the affidavit, filed in support of the petition, the defendants have also stated that after receiving the summons in the present suit, they approached the first plaintiff and enquired about

the filing of the suit.

4. It is the case of the defendants that the plaintiffs informed them that they will withdraw the suit in O.S.No.291 of 2011 and therefore, they did not file their written statement and contest the case. Further, the defendants have stated that they came to know about the ex-parte decree passed in the suit only recently. Further, the defendants have not mentioned the date as to when they came to know about the ex-parte decree. The application was filed before the trial Court under Section 5 of the Limitation Act on 03.10.2013. In the typed set of papers, the petitioners have also enclosed the summons issued to them in the Execution Proceedings in E.P.No.145 of 2013 and on perusal of the same, it could be seen that the summons were issued on 10.12.2013. When the summons were issued on 10.12.2013, how the petitioners came to know about the ex-parte decree on 03.10.2013, was not explained by the petitioners in the affidavit filed in support of the petition.

5. In the absence of any specific date given by the defendants as to when they came to know about the ex-parte decree, the trial Court has rightly rejected the averments stated in the

affidavit, filed in support of the petition, and dismissed the petition. Even if the documents viz., the judgment passed in O.S.No.780 of 1988 and A.S.No.238 of 1998 are produced before the trial Court, the same will not improve the case of the defendants in explaining the reasons for the delay in the application, filed under Sec.5 of the Limitation Act. The only thing that has to be taken into consideration is whether the petitioner, seeking condonation of delay, has explained the reasons in a proper manner.

6. In the case on hand, the averments stated in the affidavit, filed in support of the petition, are bereft of details and very bald. That apart, the defendants have stated that the plaintiffs have agreed to withdraw the suit, however, the said averment was denied by the plaintiffs in their counter. When the plaintiffs have denied the averments stated in the affidavit, filed in support of the petition, the burden is on the defendants to establish the averments stated in the affidavit, by adducing proper evidence. Further, the defendants should have entered the box and proved the averments before the trial court. Since the reasons for the delay was not properly explained, the trial Court has rightly dismissed the application.

7. It is a settled position that unless, the party, seeking for condonation of delay, gives sufficient cause for the delay, the delay should not be condoned. In the absence of sufficient cause shown by the petitioners, I do not find any reason to interfere with the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. Consequently, connected MP is closed.

07-11-2016

sr

Index:o
website:yes

To

The Principal District Munsf Court, Kallakurichi

M. DURAISWAMY,J.,

sr

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