

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3178 of 2015
and M.P.No.1 of 2015
and C.M.P.No.12192 of 2016

1.P.Kanagaraj

2.A.Muthukumar

... Petitioners

Vs.

A.Pangajam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 23.04.2015 passed in I.A.No.146 of 2015 in O.S.No.577 of 2013 on the file of the V Additional District Judge, Coimbatore.

For Petitioners : Mr.R.Narayanan

For Respondent : Mr.A.Kalivanan

ORDER

Challenging the fair and final order passed in I.A.No.146 of 2015 in O.S.No.577 of 2013 on the file of the V Additional District Court, Coimbatore, the plaintiffs have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.577 of 2013 for specific performance. Since the defendant failed to appear before the trial Court, the trial Court set her exparte and an exparte decree was passed against her on 04.02.2015. Thereafter, the defendant filed an application in I.A.No.146 of 2015 to condone the delay of 305 days in filing the petition to set aside the exparte decree dated 04.02.2015.

3.In the affidavit filed in support of the petition, the defendant has stated that she was 87 years and that she has no absolute vision power and therefore, she cannot proceed independently without the help of others. In paragraph-7 of the affidavit filed in support of the petition, the defendant has also stated that her son and the Power Agent Arunmani used to get signatures from her and she also received notices often. While so, she also received notice in the Execution Petition as well as in O.S.No.577 of 2013. However, she was of the impression that those papers are connected with the other suit in O.S.No.2688 of 2013. She has also stated that she is an illiterate lady and she is not in a position to understand the contents of the notices and papers received by her.

4.In the counter affidavit of the plaintiffs, the plaintiffs have denied

the averments stated in the affidavit filed in support of the petition and also stated that the defendant has not given sufficient cause for condoning the delay. The trial Court, taking into consideration the case of both parties, allowed the application on condition the defendant should pay a cost of Rs.2,000/- to the plaintiffs. The trial Court found that the defendant has explained the reasons for the delay in an acceptable manner.

5.The learned counsel appearing for the petitioner submitted that the trial Court should not have condoned the delay for the reason that the plaintiffs have got a very good case in the suit. Further, the learned counsel, in support of his contention, relied upon an un-reported judgment of this Court ***dated 26.07.2013*** made in ***C.R.P(NPD).No.2115 of 2012*** wherein this Court held that unless the party gives sufficient reason for the condonation of the delay, the delay should not be condoned.

6.It is settled position that a party seeking for condonation of the delay should give acceptable reason for the delay.

7.In the case on hand, the defendant has stated that she was aged 87 years and she has no absolute vision power and hence, she was not in a position to read the papers served on her. The suit in O.S.No.577 of 2013

was filed by the plaintiffs for specific performance. In these circumstances, the trial Court has rightly held that the defendant has satisfactorily explained the reasons for the delay and condoned the delay on payment of cost of Rs.2,000/-. Even for condoning the delay of 305 days, the trial Court had imposed a cost of Rs.2,000/- payable by the defendant to the plaintiffs. The reasoning given by the trial Court is just and proper.

8.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 the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

9.Since the suit is pending from 2013, I direct the V Additional District Judge, Coimbatore to dispose of the suit in O.S.No.577 of 2013, on merits and in accordance with law, within three months from the date of receipt of a copy of this order, after giving opportunity to both the parties. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

18.08.2016

Note: Issue order copy on 19.08.2016.

To

The V Additional District Court,
Coimbatore.

M.DURAIWAMY,J.
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