

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.754 of 2014
and M.P.No.1 of 2014

T.M.Saminathan (Died)

1.S.P.Arunachalam

2.Rukmani

3.C.Renukadevi

4.Kavitha

5.Amaravathi

6.Sasikala

7.Anitha

8.Savitha

Sellammal

9.Sarojinidevi

10.Vijayakumar

11.Kiruthikadevi

... Petitioners

Vs.

P.K.Ponnusamy (Died)

1.P.Sivakumar

P.K.Chinnasamy (Died)

2.Narmadhadevi

3.Tamilselvi

4.Thirumoorthy

5.Valliammal

6.Pushpathal

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the petition and order dated 20.09.2013 made in I.A.No.766 of 2011 in O.S.No.40 of 2006 on the file of the I Additional District Court, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

Challenging the fair and final order passed in I.A.No.766 of 2011 in O.S.No.40 of 2006 on the file of the I Additional District Court, Erode, the plaintiffs have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.40 of 2006 for recovery of a sum of Rs.19,92,000/- together with interest and to create a charge from the suit properties for the payment of suit claim. The defendants filed their written statement and were contesting the suit.

3. When the suit was taken up for trial, the defendants remained absent and therefore, an *ex parte* decree was passed on 05.02.2008.

4. Thereafter, the defendants filed an application under Order 9 Rule 13 of the Civil Procedure Code to set aside the *ex parte* decree in C.F.R.No.2234 of 2008 on 12.02.2008. However, the said application was not prosecuted by the defendants, therefore, they filed another application in I.A.No.766 of 2011 to condone the delay of 1285 days in filing the application to set aside the *ex parte* decree. In the affidavit filed in support of the petition, the defendants have stated that they contacted their counsel after three years from the date of filing the application in C.F.R.No.2234 of 2008 and that on scrutiny, their counsel could not trace the papers from the Registry of the trial Court. Hence, they were advised to file a fresh application. Except stating that they were of the *bonafide* impression that their counsel would have proceeded with the application in C.F.R.No.2234 of 2008, they have not stated any other reason for condoning the inordinate delay of 1285 days in filing the application to set aside the *ex parte* decree. When the petitioners had filed the application on 12.02.2008 to set aside the *ex parte* decree dated 05.02.2008, they should have been diligent in prosecuting the matter in a proper manner. Having

left the suit to be decreed *exparte* on 05.02.2008, the defendants cannot remain silent for three more years and thereafter, verify from their counsel with regard to the fate of the application filed in C.F.R.No.2234 of 2008. The defendants should have been vigilant and followed the matter with their counsel and prosecuted the earlier application immediately. They cannot remain silent for three years and contact their counsel to verify the fate of the application filed by them under Order 9 Rule 13 of the Civil Procedure Code. Though the trial Court had given a finding against the defendants, ultimately, the trial Court condoned the delay in the interest of justice.

5.It is settled position that unless the party seeking for condonation of the delay shows sufficient cause for the delay, the delay should not be condoned.

6.The ratio laid down by the Hon'ble Supreme Court in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*** squarely applies to the facts and circumstances of the present case.

7. In the case on hand, the defendants have not stated any other reason to prove that the delay had occurred only for the reason stated in the affidavit filed in support of the petition. That apart, in the absence of any evidence to establish that the delay had occurred only for the reason stated above, the trial Court should not have condoned the delay. Since the delay is also inordinate, the trial Court should not have exercised the discretion in favour of the defendants. In these circumstances, I do not find any merits in the application filed by the defendants before the trial Court.

8. Therefore, the fair and decreetal order passed in I.A.No.766 of 2011 are set aside. The application in I.A.No.766 of 2011 in O.S.No.40 of 2006 stands dismissed. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

23.11.2016

To

1. The I Additional District Court,
Erode.

M.DURAISWAMY,J.
va

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