

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2016
Coram

The Hon'ble Mr.Justice M.DURAISWAMY

CRP(NPD)No.782 of 2014
and M.P.No.1 of 2014

Ezhumalai Gounder

...Petitioner

Vs

Ramalinga Mudaliar

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decree dated 27.09.2013 passed in I.A.No.1071 of 2012 in O.S.No.328 of 2008 on the file of the Court of the Principal District Munsif, Villupuram.

For Petitioner : Mr.R.Agilesh
For Respondent : Mrs.R.Meenal

O R D E R

Challenging the fair and final order dated 27.09.2013 passed in I.A.No.1071 of 2012 in O.S.No.328 of 2008 on the file of the Principal District Munsif Court, Villupuram, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff has filed the suit in O.S.No.328 of 2008 for recovery of money. Since the defendant remained absent before the trial

Court, he was set exparte and an exparte decree was passed on 06.11.2008.

3. Thereafter, the defendant filed an application in I.A.No.1071 of 2012 to condone the delay of 843 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the defendant has stated that he did not receive the summons in the suit and therefore he was not aware of the decree passed on 06.11.2008. The plaintiff filed his counter, disputing the averments stated in the petition.

4. The trial Court, on verification of the records found that the private notice sent to the defendant was returned on 22.10.2008 with an endorsement "refused". Since the defendant had refused to receive the notice sent in the suit, he was called absent and an exparte decree was passed on 06.11.2008. Apart from stating that he did not receive summons, he has not given any other reason for condoning the inordinate delay of 843 days. Since the trial Court found that the defendant had refused to receive the summons, he was set exparte and an exparte decree was passed. Having refused to receive the summons, the defendant cannot take a stand that he was not aware of the suit.

Taking note of all these aspects, the trial Court had rightly dismissed the application. 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 hence the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

24.11.2016

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To

The Principal District Munsif, Villupuram.

M.DURAI SWAMY,J

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