

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.4103 of 2015
and M.P.No.1 of 2015

1.R.Rafi Mohammad

2.Fathima Nasira

... Petitioners

Vs.

The Federal Bank Ltd.,
rep by its Manager,
Royapettah High Road,
Mylapore, Chennai - 4.

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decreetal order dated 19.11.2014 made in I.A.No.52 of 2014 in O.S.No.9149 of 2010 on the file of the V Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.G.Mohiddin

For Respondent : Mr.V.Bhiman
for M/s.Sampath Kumar & Associates

ORDER

Challenging the fair and final order passed in I.A.No.52 of 2014 in O.S.No.9149 of 2010 on the file of the V Assistant Judge, City Civil Court, Chennai, the defendants have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.9149 of 2010 for recovery of a sum of Rs.3,71,198/- together with interest and for other reliefs.

3.Since the defendants remained absent before the trial Court, the trial Court passed an exparte decree on 21.08.2012. Subsequently, the defendants filed an application in I.A.No.52 of 2014 to condone the delay of 73 days in filing the petition to set aside the exparte decree. In the affidavit filed in support of the petition, the petitioners have stated that they did not receive the summons in the suit and they came to know about the exparte decree only when they received the summons in the Execution Petition. The plaintiff filed their counter wherein they have stated that the Court summons sent to the defendants were returned with an endorsement “Door Locked” and subsequently, notice was ordered by Substituted Service by paper publication and based on the paper publication, the defendants were called absent and set exparte and an exparte decree was passed on 21.08.2012.

4.Since the defendants have not received the summons in the suit, I am of the view that the trial Court has erroneously dismissed the application for condonation of the delay. The application to condone the

delay was filed on 07.11.2013 (i.e.) calculating the delay from the date of knowledge. Since the defendants have not received the summons, they should be given an opportunity to contest the suit on merits.

5.In these circumstances, the delay of 73 days for filing the petition to set aside the exparte decree is condoned on condition that the defendants paying a sum of Rs.1,500/- (Rupees one thousand and five hundred only) to the respondent Bank within a period of three weeks from the date of receipt of a copy of this order.

6.Mr.V.Bhiman, learned counsel appearing for the respondent submitted that the respondent has no objection for setting aside the exparte decree and therefore, if an application is filed by the defendants to set aside the exparte decree under Order 9 Rule 13 of the Code of Civil Procedure, the same can be allowed by the trial Court.

7.After setting aside the exparte decree passed in O.S.No.9149 of 2010, the V Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit, on merits and in accordance with law, on or before 30.04.2016.

8. With this observation, the Civil Revision Petition is allowed.
Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.01.2016

To

The V Assistant City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

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