

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.4299 of 2015
M.P.No.1 of 2015 and CMP.No.13016 of 2016

Jayasree

... Petitioner

..VS..

Sharmila

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed by the District Munsif, Palacode in I.A.No.608 of 2015 in O.S.No.257 of 2012 dated 10.09.2015.

For Petitioner : Mr.S.Haja Mohideen Gisthi for
Mr.S.Sathyaraj

For respondent : Mr.Naveen Chandar

ORDER

Heard Mr.S.Haja Mohideen Gisthi, for Mr.S.Sathyaraj, learned counsel appearing for the petitioner and Mr.Naveen Chandar, learned counsel appearing for the respondent.

2. Aggrieved over the fair and decreetal order dated 10.09.2015 passed in I.A.No.608 of 2015 in O.S.No.257 of 2012 on the file of the the District Munsif, Palacode, the defendant has filed the above Civil Revision Petition.

3. The plaintiff has filed a suit in O.S.No.257 of 2012 for specific performance. Since the defendant remained absent before the trial Court on 16.07.2014, the trial Court, passed an exparte decree on 16.07.2014. Thereafter, the defendant has filed an application in I.A.No.608 of 2015 to condone the delay of 221 days in filing the application to set aside the exparte decree. The plaintiff filed her counter and opposed the application. In the affidavit filed in support of the application, the defendant has stated that the plaintiff had put her under illegal custody and threatened her with dire consequences, which created fear on her mind and that she was suffering from mental ailment and also suffered heart attack and was hospitalized. Narrating all these reasons, the defendant has stated that she was not in a position to appear before the trial Court on 16.07.2014 and file her written statement. The defendant has also stated that on the earlier occasion, her counsel was attacked on 18.07.2013 and FIR was also lodged as against the plaintiff and others. The trial Court, taking into consideration the case of both parties,

dismissed the application, finding that the defendant has not given sufficient reason for condoning the delay of 221 days. That apart, the trial Court also observed that the defendant has not produced any documentary evidence to establish the averments stated in the affidavit filed in support of the application.

4. On a perusal of the affidavit filed in support of the application filed in I.A.No.608 of 2015, it could be seen that in paragraph Nos.2 to 4, the defendant has stated the reasons for her non appearance. As already stated, the plaintiff has filed the suit for specific performance and if no opportunity is given to the defendant to defend the case in a proper manner, her valuable rights would be lost. When the defendant has satisfactorily explained the reasons for the delay, the trial Court could have, in the interest of justice, condoned the delay and given an opportunity to the defendant to contest the suit on merits. Since the defendant has given sufficient cause for the delay in filing the application to set aside the exparte decree, I am of the view that the delay of 221 days in filing the application to set aside the exparte decree can be condoned and the defendant can be given an opportunity to contest the suit on merits.

5. In view of the same, the fair and decreetal order passed in I.A.No.608 of 2015 in O.S.No.257 of 2012 are set aside. The application in I.A.No.608 of 2015 stands allowed.

6. It is brought to the notice of this Court by the learned counsel appearing for the petitioner/defendant that the defendant has filed an application under Order 9 Rule 13 of the Code of Civil Procedure to set aside the exparte decree, which is pending before the trial Court.

7. The learned counsel for the respondent/plaintiff submitted that the respondent/plaintiff has no objection for allowing the application filed under Order 9 Rule 13 of the Code of Civil Procedure. However, this Court may direct the trial Court to dispose of the suit within a stipulated time.

8. Having regard to the submissions made by the learned counsel on either side, the District Munsif, Palacode is directed to allow the application filed under Order 9 Rule 13 of the Code of Civil Procedure and take up the suit for hearing. The revision petitioner/defendant is directed to file her written statement within a period of one week from the date of receipt of a copy of this order. The District Munsif, Palacode

is directed to dispose of the suit in O.S.No.257 of 2012 within a period of two months from the date of filing of the written statement. The petitioner/defendant is directed to co.operate with the trial Court in disposing of the matter within the stipulated time.

With the above directions, the Civil Revision Petition is allowed. No costs. Connected miscellaneous petitions are closed.

15.09.2016

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Note: Issue order copy on 16.09.2016

To
The District Munsif, Palacode

M. DURAISWAMY,J.,
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C.R.P.(NPD) No.4299 of 2015

15.09.2016