

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.974 of 2014
and M.P.No.1 of 2014

Manivel

... Petitioner

Vs

Theivasigamani

... Respondent

Civil Revision Petition under Section 115 of the Code of Civil Procedure against the order dated 03.09.2013 passed in I.A.No.341 of 2013 in O.S.No.432 of 2008 on the file of the District Munsif, Kangayam.

For Petitioner : Mr.M.Guruprasad

ORDER

Challenging the fair and final order passed in I.A.No.341 of 2013 in O.S.No.432 of 2008 on the file of the District Munsif Court, Kangayam, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.432 of 2008 for recovery of money.

3. Since the defendant failed to appear before the trial Court, he was set exparte and an exparte decree was passed on 08.07.2009. Pursuant to the decree passed in O.S.No.432 of 2008, the plaintiff filed an Execution Petition in E.P.No.73 of 2012. Subsequently, the defendant filed an application in I.A.No.341 of 2013 to condone the delay of 1263 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 the summons served on him was misplaced by him and he was not aware of the details of the suit. Further, he has stated that he came to know about the exparte decree only when he received summons in the execution proceedings. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the petition. The trial Court, after taking into consideration the case of both parties, dismissed the petition. In the affidavit filed in support of the petition, the defendant has stated that he received the summons in the suit, however, the same was misplaced and therefore, there is a delay of 1263 days in filing the application.

4. When the defendant had received the suit summons, he should have verified from the Court and entered appearance and contested the suit. The defendant cannot be expected to remain silent for 1263 days in filing the

application to set aside the exparte decree. At least, the defendant could have approached the plaintiff and got the details with regard to the filing of the suit. Even that was not done by the defendant. As already stated, it is not the case of the defendant that he did not receive the summons. That being the case, the averments stated in the affidavit would clearly establish that the defendant was not diligent in prosecuting the matter in a proper manner. Taking into consideration all these aspects, the trial Court rightly dismissed the application.

5. 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

26.10.2016

To

The District Munsif Court,
Kangayam.

M.DURAIWAMY,J.
va

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