

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).No.84 of 2015
and C.R.P.(NPD).No.85 of 2015
and M.P.Nos.1 & 1 of 2015

1.Arumugam

2.Murugan

3.Mani

4.Mahalingam

5.Lakshmi

6.Krishnan

7.Chinnasamy @ Chinnathambi ... Petitioners in both C.R.Ps

Vs

Ponni ... Respondent in both C.R.Ps
(Cause title accepted vide order dated 07.01.2015 made in M.P.Nos.1 & 1 of 2014 in C.R.P.SR.Nos.111585 & 111581 of 2014)

Civil Revision Petitions under Article 227 of the Constitution of India against the petition and orders dated 19.06.2013 and 11.11.2014 passed in I.A.No.216 of 2013 and I.A.No.656 of 2014 in O.S.No.128 of 2010 on the file of the District Munsif Court, Krishnagiri.

For Petitioners : Mr.C.Jagadish
(in both C.R.Ps)

For Respondent : Mr.J.Hariharan
(in both C.R.Ps) for Mr.V.Nicholas

COMMON ORDER

Challenging the order passed in I.A.No.216 of 2013 in O.S.No.128 of 2010 on the file of the District Munsif Court, Krishnagiri, the defendants have filed the Civil Revision Petition in C.R.P.(PD).No.84 of 2015.

2.C.R.P.(NPD).No.85 of 2015 has been filed by the defendants challenging the fair and decreetal order passed in I.A.No.656 of 2014 in O.S.No.128 of 2010 on the file of the District Munsif Court, Krishnagiri.

3.The respondent/plaintiff filed the suit in O.S.No.128 of 2010 for declaration and permanent injunction.

4.Since the defendants did not appear before the trial Court, the trial Court passed an exparte decree on 19.10.2012.

5.The application in I.A.No.216 of 2013 was filed by the plaintiff to direct the Kaveripattinam Police to provide police aid to the petitioner's possession and enjoyment of the suit property according to the order of injunction granted by the trial Court in I.A.No.427 of 2010. The trial Court granted an order of interim injunction on 21.02.2012. The plaintiff filed the application stating that the defendants are trying to interfere with her

peaceful possession and enjoyment of the suit property. Subsequent to the order of injunction granted by the trial Court, the suit was decreed exparte on 19.10.2012. Therefore, it is clear that the order passed in I.A.No.427 of 2010 on 21.02.2012 had merged with the decree passed in O.S.No.128 of 2010.

6.In such circumstances, the remedy open to the plaintiff is to file an Execution Petition and not to file an application before the trial Court seeking for police protection. The trial Court had erroneously allowed the application and ordered police protection, which is liable to be set aside. In the case of the defendants interfering with her possession, the plaintiff should have filed an Execution Petition for punishing the defendants for disobedience of the decree for permanent injunction. The application filed by the plaintiff seeking police protection is liable to be set aside. Accordingly, the fair and decreetal order passed in I.A.No.216 of 2013 in O.S.No.128 of 2010 are set aside.

7.In the application filed by the defendants in I.A.No.656 of 2014 to condone the delay of 627 days in filing the application to set aside the decree, they have stated that during the last week of July 2014, some people were blocking the way leading to their village, trying to lay fence

and that when the Villagers questioned the said people, they informed that the plaintiff had employed them to fence the pathway. Thereafter, they met their counsel and came to know that an exparte decree was passed on 19.10.2012 itself. Further, in paragraph no.3 of the affidavit, the defendants have stated that after the filing of the suit, there were talks going on through Mediators and as a result, the Villagers were not using the pathway, therefore, they did not raise any objection till July 2014. Stating the above said reasons, the defendants have filed the application to condone the delay of 627 days in filing the application to set aside the exparte decree. In the counter filed by the plaintiff, she has stated that there was no settlement talks between the parties and that she obtained Patta, Chitta and Adangal from the Authorities and also produced before the trial Court. Further, in paragraph no.6 of the counter, the plaintiff has stated that in the application in I.A.No.216 of 2013 notice was ordered to the defendants and in the application in I.A.No.1175 of 2013 also notice was sent to the defendants and inspite of receiving the notices sent through Court, they did not file an application to set aside the exparte decree passed on 19.10.2012.

8. When the defendants have received the summons in I.A.No.216 of 2013 and I.A.No.1175 of 2013 in the year 2013 itself, the reason for not filing the application to set aside the ex parte decree immediately was not explained by the defendants. The present application to condone the delay of 627 days was filed only in the month of August 2014. The filing of the application after a delay of 627 days, inspite of the fact that they received the summons in I.A.No.216 of 2013 and I.A.No.1175 of 2013, would establish that the defendants were not diligent in prosecuting the matter in a proper manner. The reasoning given by the defendants in the affidavit filed in support of the petition was rightly rejected by the trial Court. In the absence of sufficient cause shown by the defendants, the delay cannot be condoned.

9. 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.

10. In these circumstances, I do not find any reason to interfere with order passed by the trial Court. Accordingly, the Civil Revision Petition in C.R.P.(PD).No.84 of 2015 stands allowed and the Civil Revision Petition in

C.R.P.(NPD).No.85 of 2015 stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

23.09.2016

To

1.The District Munsif Court,
Krishnagiri.

M.DURAIWAMY,J.
va

**C.R.P.(PD).No.84 of 2015
and C.R.P.(NPD).No.85 of 2015
and M.P.Nos.1 & 1 of 2015**

23.09.2016