

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1068 of 2016
and
CMP No.5909 of 2016

M. Raju

... Petitioner

vs

P. Sathishkumar

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure against the order and decreetal order dated 18.12.2012 passed by the learned Subordinate Judge, Pollachi in I.A.No.291 of 2012 in O.S.No.131 of 2008.

For Petitioner : Mr.M. Padmanaban

For respondents : Mr.A. Ilango

ORDER

Challenging the fair and decreetal order passed in I.A. No.291 of 12 in O.S.No.131 of 2008 on the file of Subordinate Court, Pollachi, the defendant has filed the the above Civil Revision Petition.

2. The respondent plaintiff filed a suit in O.S. No.131 of 2008 for Specific Performance. Since, the defendant failed to appear before the trial Court, the trial Court set him ex-parte and an ex-parte decree was passed against him on 30.09.2009. Thereafter, the defendant filed an application in I.A.No.291 of 2012 to condone the delay of 343 days in filing the application to set aside the ex-parte decree.

3. In the affidavit, filed in support of the petition, the defendant has stated that he was taking treatment in Kerala and therefore, he could not file the application to set aside the ex-parte decree in time.

4. The defendant was examined as PW1 before the trial Court. However, he has not produced any medical certificate or document to prove the averments stated in the affidavit, filed in support of the petition.

5. When the defendant has stated that he was taking treatment from 2008 to 2010 in Kerala, he should have produced necessary medical records before the trial Court to establish the said

contention. In the absence of any acceptable reason, given by the defendant, for condoning the delay of 343 days, the ratio laid down by the Hon'ble Supreme Court reported in **2015 (1) SCC 680 (H. Dohil Constructions Company Private Limited vs Nahar Exports Limited and another)** squarely applies to the facts and circumstances of the present case. Unless, the party, seeking for condonation of delay, gives sufficient cause for the delay, the delay should not be condoned. The trial Court, taking note of all these aspects, had rightly dismissed the application.

6. 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 the same is dismissed. No costs. Consequently, connected CMP is closed.

21-09-2016

sr

Index:no
website:yes
To

The Subordinate Judge, Pollachi

M. DURAISWAMY,J.,

sr

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