

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.1149 of 2016

and

CMP.No.6312 of 2016

Gunasekaran
S/o.Kuppusamy

.. Petitioner

Vs

Sivakumar
S/o.K.P.Mariappa Chettiar

.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of C.P.C., praying to set aside the fair and decretal order dated 12.01.2016 made in I.A.No.37 of 2015 in O.S.No.48 of 2013 on the file of the learned Subordinate Judge, Gobichettipalayam.

For Petitioner

:Mr.V.P.K.Gowtham

ORDER

The revision petitioner/plaintiff has filed this Civil Revision Petition, challenging the order dated 12.01.2016 passed by the Lower Court allowing delay of 396 days in filing the application under Order 9 rule 13 CPC., to set aside the exparte decree.

2.The suit in O.S.No.48 of 2013 was decreed in favour of the plaintiff and the defendant was set *ex parte* on 29.07.2013, for his non-appearance and non-filing of written statement. The reason stated is that the defendant had been suffering from illness and on account of which, he did not attend the Court.

3. Originally, an application had been filed by the defendant under Order 9 Rule 7 of C.P.C. But the same was returned for rectification of defects and it was not represented in time. Subsequently, an *ex parte* decree in the suit was passed on 05.09.2013. Thereafter, the application was filed under Order 9 Rule 13 C.P.C., along with an application under Section 5 of the Limitation Act.

4. By an order dated 12.01.2016, the Court below has condoned the delay of 396 days in filing the application. Challenging the same, the revision petitioner/plaintiff has filed this Civil Revision Petition.

5. It is the contention of the revision petitioner that the plaintiff (the revision petitioner herein) has filed the Execution Petition in E.P.No.66 of 2014 and notice in execution proceedings

was served on the defendant and he had entered appearance.

6. It is also contended by the plaintiff that the defendant is attending his regular work from 31.07.2013, which proved that the defendant has not chosen to take any steps to set aside the exparte decree in time; after a lapse of 396 days, the defendant instituting an application to condone the delay in filing a petition to set aside the exparte decree, is only with an intention to drag on the suit proceedings.

7. It is a case where originally Order 9 Rule 7 application has been filed and even after the exparte decree being passed, neither an application to set aside the exparte order was amended as that of an application under Order 9 Rule 7 C.P.C., nor a separate application under Order 9 Rule 13 has been filed.

8. However, the Court below is of the view that defendant has taken all efforts in setting aside the exparte decree passed against him.

9. Considering the conduct of the defendant right from the beginning, the Court below thought it fit to condone the delay in filing the petition to set aside the exparte decree. Therefore, this is

a case where the Court has exercised discretion correctly on sound principles of law and therefore it does not require any interference by this Court.

10. However, the learned counsel for the revision petitioner prayed for an order of the speedy disposal of the case. Considering the fact that the suit is pending from the year 2013 and there is a delay of 396 days in filing the application to set aside the exparte decree, the order for speedy disposal is appropriate.

11. As the written statement has already been filed along with the application under Order 9 Rule 7, there may not be any difficulty for the lower Court to dispose of the same within the limited time frame. Therefore, the lower Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

12. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2016

ds

To:
The Sub Court
Gobichettipalayam.

S.VIMALA,J.

ds

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