

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1631 of 2016
and C.M.P.No.8821 of 2016

C.K.Maarimuthu

... Petitioner

Vs.

1.E.Kanniappan

2.J.Manickam

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the judgment and decree dated 21.01.2016 passed in I.A.No.402 of 2013 in O.S.No.70 of 2012 on the file of the Principal District Judge, Kancheepuram District, Chengalpet.

For Petitioner : Mr.M.L.Ganesh

ORDER

Challenging the fair and final order passed in I.A.No.402 of 2013 in O.S.No.70 of 2012 on the file of the Principal District Court, Kancheepuram District, Chengalpet, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.70 of 2012 for specific

performance. Since the defendants failed to appear before the trial Court, they were set exparte and an exparte decree was passed on 17.12.2012. Subsequently, the plaintiff filed Execution Petition.

3. Thereafter, the defendants filed an application in I.A.No.402 of 2013 to condone the delay of 165 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, which was sworn to by the 2nd defendant, he has stated that he was hospitalized and was taking treatment for knee problem. Further, in the affidavit, he has also stated that the 1st defendant was also taking treatment in Jipmer Hospital, Pondicherry, therefore, they could not appear before the trial Court for filing written statement and contest the suit. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the petition.

4. The trial Court, taking into consideration the case of both parties, allowed the application on payment of costs of Rs.25,000/-.

5. The learned counsel appearing for the petitioner/plaintiff submitted that the defendants have deposited the cost amount of Rs.25,000/- before the trial Court. In support of their contention, the

defendants marked Exs.P1 and P2 medical certificates to establish their contention that they were taking treatment for ailment.

6.Since it is a suit for specific performance, the trial Court found that the delay of 165 days is not so abnormal. In the interest of justice, the trial Court has rightly accepted the case of the defendants and condoned the delay. 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 liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

7.The learned counsel appearing for the petitioner fairly submitted that the plaintiff has no objection for allowing the application filed under Order 9 Rule 13 of the Civil Procedure Code before the trial Court.

8.In view of the submissions made by the learned counsel for the petitioner, the Principal District Judge, Kancheepuram District, Chengalpet is directed to allow the application filed under Order 9 Rule 13 of the Civil Procedure Code.

9. Since the suit is pending from the year 2012, I direct the Principal District Judge, Kancheepuram District, Chengalpet to dispose of the suit in O.S.No.70 of 2012, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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10.06.2016

Note: Issue order copy on 14.06.2016.

To

The Principal District Judge,
Kancheepuram District,
Chengalpet.

M.DURAIWAMY,J.
va

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