

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1933 of 2016
and C.M.P.No.10171 of 2016

1.M.Raju

... Petitioner

Vs.

K.Palanisamy Gounder

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 18.12.2012 made in I.A.No.476 of 2012 in O.S.No.124 of 2008 on the file of the Subordinate Court, Pollachi.

For Petitioner : Ms.Lesi Saravanan

For Respondent : Mr.A.Ilango

ORDER

Challenging the fair and final order passed in I.A.No.476 of 2012 in O.S.No.124 of 2008 on the file of the Subordinate Court, Pollachi, the 1st defendant has filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.124 of 2008 against the revision petitioner and his wife for specific performance.

3. Since the defendants failed to appear before the trial Court, the trial Court set them *ex parte* and an *ex parte* decree was passed against the defendants on 05.09.2009. Thereafter, the 1st defendant alone filed an application in I.A.No.476 of 2012 to condone the delay of 491 days in filing the application to set aside the *ex parte* decree. In the affidavit filed in support of the petition, the 1st 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. It is pertinent to note that the 2nd defendant, who is the wife of the 1st defendant, has not filed any application and there is no averment with regard to the 2nd defendant in the affidavit filed by the 1st defendant. The decree passed as against the 2nd defendant has become final. Though P.W.1 was examined before the trial Court, he has not produced any medical records to prove the averment stated in the affidavit filed in support of the petition. When the 1st defendant has stated that he was taking treatment from 2008 to 2010 in Kerala, he should have produced the necessary medical records before the trial Court to establish the said contention. When the 2nd defendant was very much available, she could have filed an application seeking for adjournment before the trial Court stating that the 1st defendant was taking treatment at Kerala.

5. In the absence of any acceptable reasons given by the 1st defendant for condoning the inordinate delay of 491 days, the trial Court has rightly dismissed the application. 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. 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, 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 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
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20.07.2016

To

The Subordinate Court,
Pollachi.

M.DURAIWAMY,J.
va

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