

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2048 of 2016
and
CMP No.10664 of 2016

P. Padmavathi

.... Petitioner

vs

M. Mahendran

.... Respondent

Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the Fair and final order dated 24.03.2015 in I.A.No.300 of 2014 in O.S.No.674 of 2003, on the file of First Additional Subordinate Judge, Coimbatore

For Petitioner : M/s Udaya P.S. Menon

ORDER

Challenging the fair and final order passed in I.A.No.300/2014 in O.S.No.674/2003 on the file of I Additional Sub Court, Coimbatore, the defendant filed the above civil revision petition. The plaintiff filed a suit

in O.S.No.674/2003 for specific performance.

2. Before the trial court, the defendant appeared through her counsel and was contesting the case. Subsequently, she remained absent and an exparte decree was passed on 08.01.2008. Thereafter, the defendant filed an application in I.A.No.300/2014 to condone the delay of 2348 days in filing the petition to set aside the exparte decree.

3. In the affidavit, filed in support of the petition, the defendant has stated that she came to know about the passing of exparte decree in the suit only on 11.06.2014 when she received the notice, sent by the respondent's counsel, demanding possession of the property. Further, in paragraph-3 of the affidavit, filed in support of the petition, the defendant has stated that his previous counsel did not intimate the exparte decree and inspite of repeated requests and demands, she could not get proper reply from her counsel and she came to know about the exparte decree only after receiving the said notice sent by the respondent counsel.

4. The defendant, having appeared before the trial Court and filed the written statement, should have been diligent in prosecuting the matter in a proper manner. She cannot wait for nearly seven years for filing an application to set aside the exparte decree. Except stating that her counsel did not inform her about passing of exparte decree, she has not given any acceptable reason for condoning the inordinate delay of 2348 days.

5. The Hon'ble Supreme Court in the judgment reported in **2015(1) SCC 680 (H. Dohil Constructions Co Pvt Ltd vs Nahar Exports Limited & another)**, while declining to condone the delay in representing the papers, observed that a party cannot blame his counsel for not representing the papers in time even without mentioning the name of the counsel in the affidavit. Further, the Hon'ble Supreme Court held that unless the party, seeking for condonation of delay, gives sufficient cause for condoning the delay, the delay could not be condoned. The ratio laid down in the judgment reported in **2015(1) SCC 680 (H. Dohil Constructions Co Pvt Ltd vs Nahar Exports Limited & another)**, squarely applies to the facts and circumstances of the present case.

6. In the case on hand, the petitioner/defendant has not given sufficient cause for condoning the inordinate delay of 2438 days. The trial Court, taking into consideration of all aspects, rightly dismissed the application.

7. The learned counsel appearing for the petitioner relied upon an unreported judgement of this Court dated 07/04/2015 made in CRP No.2497/12 and 262/2013, wherein, this Court held that the judgment should be in accordance with Sec.2(9) of Civil Procedure Code.

8. The ratio laid down in the judgment is not applicable to the present case for the reason that the revision has been filed as against the order declining to condone the delay of 2338 days in filing the petition to set aside the exparte decree.

9. Following the ratio laid down by the Hon'ble Supreme Court reported in **2015(1) SCC 680 (H. Dohil Constructions Co Pvt Ltd vs Nahar Exports Limited & another)**, I am of the view that

the trial court had rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial court. Hence the Civil Revision Petition is liable to be dismissed as devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected CMP is closed.

13-07-2016

sr

Index:no
website:yes

To

The First Additional Subordinate Judge, Coimbatore

M. DURAISWAMY,J.,

sr

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