

Reserved on : 08.11.2016

Delivered on : 09.11.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2199 of 2016
and C.M.P.No.11416 of 2016

1.S.Nagarajan

2.Sadhu Sachidanandam

3.Kalaiyarasai

... Petitioners

Vs

Bose Ponnambalam

... Respondent

Civil Revision Petition under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 06.06.2016 passed in I.A.No.436 of 2011 in O.S.No.70 of 2005 on the file of the Subordinate Judge, Dharmapuri.

For Petitioners : Mr.I.Abrar Md.Abdullah

For Respondent : Mr.S.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan Associates

ORDER

Challenging the fair and decreetal order passed in I.A.No.436 of 2011 in O.S.No.70 of 2005 on the file of the Subordinate Court, Dharmapuri, the defendants have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.70 of 2005 for recovery of a sum of Rs.3,50,000/- together with interest.

3.Since the defendants failed to appear before the trial Court, they were set exparte and an exparte decree was passed on 07.02.2006.

4.Pursuant to the decree passed in O.S.No.70 of 2005, the respondent/plaintiff filed an Execution Petition in E.P.No.46 of 2008. The Execution Petition was filed in June 2008. Thereafter, on 05.04.2011, the defendants filed an application in I.A.No.436 of 2011 to condone the delay of 1852 days in filing the application to set aside the exparte decree.

5.In the affidavit filed in support of the petition, the defendants have stated that the 1st defendant has been conducting the case on the behalf of the defendants 2 & 3 since they have become old. Further, the defendants have stated that after receiving the summons in O.S.No.70 of 2005, they engaged one Mr.P.Srinivasan to appear on their behalf and has also given Vakalat in his favour. According to the defendants, their counsel informed them that their presence is not required at that stage and that he would inform them as and when their presence is required. Further, the

defendants have stated that when they received the notice in R.E.P.No.46 of 2008 to appear on 21.07.2008, they came to know about the exparte decree passed in the suit. Thereafter, they contacted their counsel and instructed him to take steps to file an application to set aside the exparte decree. Subsequently, they came to know that their property was brought to sale.

6.The defendants have stated that subsequently when they enquired, they came to know that their counsel Mr.P.Srinivasan was not attending the Court, since the Bar Council of Tamil Nadu had suspended him from practicing in any Court for a period of three years by order dated 18.02.2008. Thereafter, they engaged some other counsel and filed the application to set aside the exparte decree. In the affidavit, the defendants have also stated that the delay in filing the application had occurred only because of their counsel, Mr.P.Srinivasan.

7.The plaintiff in his counter disputed the averments stated in the affidavit and also stated that the defendants were not diligent in prosecuting the matter in a proper manner. In the counter, the plaintiff has also stated that the defendants have engaged one K.Kaveri Varman, Advocate, to appear in the execution proceedings and also filed an

application in the Execution Petition to set aside the exparte order. According to the plaintiff, the said application was served on his counsel on 26.08.2010. According to the plaintiff, the reasoning given by the defendants for condoning the inordinate delay of 1852 days cannot be accepted.

8.Mr.I.Abrar Md.Abdullah, learned counsel appearing for the petitioners submitted that the defendants' counsel viz., P.Srinivasan was suspended from practice by the Bar Council of Tamil Nadu for a period of three years in D.C.C.No.32 of 2007 by order dated 18.02.2008.

9.The said action was taken by the Bar Council of Tamil Nadu based on a complaint given by one G.Perumal. Therefore, it is clear that the said Advocate was suspended for a period of three years from 18.02.2008 to 18.02.2011. But the suit was decreed exparte as early as on 07.02.2006. The defendants cannot remain silent for years together without enquiring about their case with their counsel. When the suit was filed in the year 2005 and when they handed over their Vakalat to the said Advocate, they cannot keep quite till 2011 even without ascertaining the stage of the case. Their Advocate was suspended from practice only in February 2008 (i.e.) after two years from the date of passing of the exparte decree. When the

defendants have entered appearance in the Execution Petition as early as on 21.07.2008, the reasoning for not filing the application to set aside the exparte decree immediately thereafter, was not explained by the defendants. The application to set aside the exparte decree was filed only on 05.04.2011. Their counsel P.Srinivasan was suspended by order dated 18.02.2008 whereas, the 1st hearing of the Execution Petition was on 21.07.2008 (i.e.) while the order of suspension was in force. Though the plaintiff has averred that the defendants engaged K.Kaveri Varman as their counsel, the said averment was not proved by the plaintiff. The other reasoning given by the defendants was that they came to know about the exparte decree only on 23.03.2011, their neighbour informed them that their property is brought to Court auction. However, in order to prove the said averment, the defendants have not examined the said person.

10.Inspite of the fact that the defendants' counsel P.Srinivasan was suspended from practice for a period of three years from 18.02.2008, that cannot be taken as an acceptable reason for condoning the inordinate delay of 1852 days. When the defendants knew about the pendency of the suit and when they engaged an Advocate to appear on their behalf as early as in the year 2005, they cannot remain silent forever, expecting a call from their counsel. Inspite of the decree being passed on 07.02.2006, the

defendants chose to file the application to set aside the exparte decree only on 05.04.2011. As already stated, their counsel was suspended only after two years from the date of passing of the exparte decree. When the defendants had knowledge about the exparte decree as early as on 21.07.2008, they preferred to file the application only on 05.04.2011. These things will clearly establish that the defendants have not explained the reason for the delay in an acceptable manner. The defendants were also not diligent in prosecuting the matter in a proper manner. In these circumstances, the trial Court has rightly declined to condone the inordinate delay of 1852 days.

11. 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
va

09.11.2016

To

The Subordinate Judge,
Dharmapuri.

M.DURAIWAMY,J.
va

Order made in
C.R.P.(NPD).No.2199 of 2016
and C.M.P.No.11416 of 2016

09.11.2016