

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2377 of 2016
and C.MP.No.12298 of 2016

G.Ekambaram

... Petitioner

Vs.

Arulmighu Madhavaperumal Thirukoil,
rep by its Executive Officer,
having Office at Temple premises,
Mylapore, Chennai - 600 014.

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 01.07.2016 in C.M.P.No.1425 of 2015 in A.S.(SR).No.57463 of 2015 on the file of the Principal City Civil Court, Chennai.

For Petitioner : Mr.S.Subbiah

ORDER

Challenging the order passed in C.M.P.No.1425 of 2015 in A.S.(SR).No.57463 of 2015 on the file of the Principal Judge, City Civil Court, Chennai, the defendant in O.S.No.3380 of 2007 on the file of the VI Assistant Judge, City Civil Court, Chennai has filed the above Civil Revision Petition.

2.The respondent/Temple filed the suit in O.S.No.3380 of 2007 for

recovery of possession and for damages.

3.The suit was contested by the defendant and the trial Court decreed the suit on 28.04.2010. Thereafter, the defendant preferred an appeal in A.S.(SR).No.57463 of 2015 as against the judgment and decree passed by the trial Court before the Principal Judge, City Civil Court, Chennai with an application in I.A.No.1425 of 2015 to condone the delay of 2020 days. In the affidavit filed in support of the petition, the defendant has stated that he paid a sum of Rs.50,000/- by cash on 04.12.2010 to the Executive Officer towards full and final settlement for permitting him to continue the tenancy. Further, he has stated that he was given an impression that the decree will not be executed against him. Further, the defendant has stated that only when he received notice in E.P.(SR).No.4098 of 2015 on the file of the X Assistant Judge, City Civil Court, Chennai on 05.11.2015, he came to know that the plaintiff/Temple is proceeding with the decree passed in the suit in O.S.No.3380 of 2007. The averments stated in the affidavit filed in support of the petition were disputed by the plaintiff/Temple in their counter. In paragraph-3 of the counter, the Executive Officer has specifically denied the receipt of Rs.50,000/- in cash on 04.12.2010 from the defendant. Further, he has specifically stated that there was no settlement talks between the defendant and the plaintiff. The

Lower Appellate Court, taking into consideration the case of both parties, refused to condone the delay of 2020 days for the reason that the defendant has not given the reasons in a proper manner.

4.It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for condoning the delay, the delay should not be condoned.

5.In the case on hand, though the defendant has stated that he paid Rs.50,000/- in cash to the Executive Officer towards full and final settlement, the same was denied by the Executive Officer in his counter. In support of his contention, the defendant has not produced any evidence, either oral or documentary. In the absence of any evidence to establish the averments stated in the affidavit filed in support of the petition, the Lower Appellate Court has rightly dismissed the application.

6.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.

7. Since the defendant has not explained the reasons for the delay in a proper manner, I do not find any reason to interfere with the order passed by the Lower Appellate 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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03.08.2016

To

The Principal City Civil Court,
Chennai.

M.DURAIWAMY,J.
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