

Reserved on : 06.10.2016

Delivered on : 20.10.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2421 of 2016
and C.M.P.No.12522 of 2016

1.Latha @ Stella
2.Pasteur Alisa

... Petitioners

Vs

J.Ganessin

... Respondent

Civil Revision Petition under Section 115 of the Civil Procedure Code against the fair and decretal order made in I.A.No.334 of 2015 in O.S.No.1295 of 2010 dated 11.03.2016 on the file of the 1st Additional District Munsif, Puducherry.

For Petitioners : Mr.V.Lakshminarayanan

Respondent : Mr.J.Ganessin,
party-in-person

ORDER

Challenging the fair and final order passed in I.A.No.334 of 2015 in O.S.No.1295 of 2010 on the file of the 1st Additional District Munsif, Puducherry, the defendants have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.1295 of 2010 for declaration and permanent injunction.

3.Since the defendants failed to appear before the trial Court, the trial Court set them exparte and passed an exparte decree on 10.08.2011. Thereafter, the defendants filed an application in I.A.No.334 of 2015 to condone the delay of 1339 days in filing the petition to set aside the exparte decree.

4.In the affidavit filed in support of the petition, the defendants have stated that after the receipt of summons, they approached the plaintiff and that the plaintiff informed them that he has filed the suit wrongly against them and that he is going to not press the suit and that they were under the impression that the plaintiff would have not pressed the suit. Further, the defendants have stated that only recently they came to know about the exparte decree passed on 10.08.2011 when they received the notice in the Execution Petition.

5.In the counter filed by the plaintiff, he has stated that summons were duly served on the defendants and they were called absent on

29.10.2010 and the suit was posted for exparte evidence on 24.11.2010 and thereafter, the exparte decree was passed on 10.08.2011. Further, the plaintiff has stated that though the defendants entered appearance through their counsel in E.P.No.83 of 2012 in O.S.No.1295 of 2010 in Vakalat SR.No.1064 dated 21.01.2013, they have filed the application to set aside the exparte decree only on 13.04.2015. In these circumstances, the plaintiff has stated that the averments in the affidavit filed in support of the petition cannot be accepted.

6.On the side of the plaintiff, the Vakalat filed by the defendants in E.P.No.83 of 2012 was marked as Ex.R1 and the certified copy of the counter filed by the defendants in E.A.No.20 of 2014 in E.P.No.83 of 2012 on 17.03.2014 was marked as Ex.R2.

7.The trial Court, taking into consideration the case of both parties, dismissed the petition. Aggrieved over the same, the defendants have filed the above Civil Revision Petition.

8.Heard Mr.V.Lakshminarayanan, learned counsel appearing for the petitioners and also the submissions made by Mr.J.Ganessin, respondent, party-in-person.

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel appearing for the petitioners and the respondent in person, it could be seen that the defendants in their affidavit have stated that they came to know about the *ex parte* decree passed on 10.08.2011 only when the notice sent in the Execution Petition were received by them.

10. On a perusal of the judgment passed by the trial Court, it could be seen that the summons were duly served on the defendants in the suit and they were called absent on 29.10.2010 and on the same day, they were set *ex parte*. The suit was adjourned to 24.11.2010 for recording *ex parte* evidence. On 25.11.2010, the plaintiff was examined as P.W.1 through proof affidavit and Exs.A1 to A15 were marked. On 10.08.2011, after perusing the records, the trial Court decreed the suit *ex parte*.

11. It is pertinent to note that pursuant to the decree passed in O.S.No.1295 of 2010, the plaintiff filed an Execution Petition in E.P.No.83 of 2012 on the file of the 1st Additional District Munsif, Puducherry. In the said Execution Petition, the defendants entered appearance through their counsel on 21.01.2013 and also filed their Vakalat through their counsel,

which was marked as Ex.R1. The said Vakalat was filed on 21.01.2013 in Vakalat SR.No.1064. Thereafter, the defendants also filed their counter in E.A.No.20 of 2012 in E.P.No.83 of 2012 on 17.03.2014. In spite of having knowledge about the ex parte decree passed on 10.08.2011, the defendants chose to file the application to set aside the ex parte decree only on 13.04.2015. When the defendants entered appearance in the Execution Petition in E.P.No.83 of 2012 as well as on 21.01.2013, the reason for not filing an application immediately thereafter, has not been explained by the defendants. In spite of entering appearance on 21.01.2013 in the execution proceedings, the defendants chose to file the application to set aside the ex parte decree after a delay of more than two years. The reason for not filing the application immediately after the receipt of the summons in the Execution Petition was not explained by the defendants. In the absence of sufficient cause shown by the defendants for condoning the inordinate delay of 1339 days, the trial Court has rightly dismissed the petition.

12. It is settled position that unless the party seeking condonation of delay shows sufficient cause for the delay, the delay should not be condoned. In the case on hand, the defendants have not explained the reasons for the delay in a proper manner.

13. 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

20.10.2016

To

The 1st Additional District Munsif,
Puducherry.

M.DURAIWAMY,J.
va

Order made in
C.R.P.(NPD).No.2421 of 2016
and C.M.P.No.12522 of 2016

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