

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

Civil Revision Petition No.253 of 2016
and C.M.P.No.1198 of 2016

J.Ganessin

... Petitioner / Plaintiff

Vs.

1. Latha alias Stella,
W/o. Pasteur Anbu

2. Pasteur Alisa, W/o. Royappan

... Respondents / Defendants

Prayer :- Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure, 1908, against the order of notice, dated 10.07.2015, by the I Additional District Munsif, Pondicherry, in I.A.No.334 of 2015 in O.S.No.1295 of 2010.

For Petitioner : Mr. J.Ganessin, Party-in-Person

- - -

ORDER

The petitioner herein, as the plaintiff, has filed a suit in O.S.No.1295 of 2010, before the I Additional District Court, Puducherry, seeking the relief of permanent injunction against the defendants. The said suit has been decreed on 10.08.2011. Thereafter, an Execution Petition has been taken out by the petitioner / plaintiff, in E.P.No.83 of 2012 in O.S.No.1295 of 2010. Subsequently,

an Execution Application has also been filed by the petitioner herein, in E.A.No.20 of 2013 in E.P.No.83 of 2012.

2. In the meanwhile, the defendants in the suit have chosen to file an application to set-aside the exparte decree along with an application to condone the delay of 1,339 days in presenting the petition to set-aside the exparte decree. The Court below has chosen to issue notice on the application filed under Section 5 of the Limitation Act (application to condone the delay). Aggrieved over the issuance of the notice (calling upon the plaintiff to file the objections) this Revision Petition has been filed.

3. It is to be noted that, as against the issuance of notice in Section 5 Application, calling upon the plaintiff to enter appearance and to file the counter, there cannot be any grievance and the Revision is not maintainable. However, this Court, while exercising jurisdiction under Article 227 of the Constitution of India, has to take note of the delay complained of in the execution of the decree and wherever necessary should issue directions to the lower court.

4. It is the grievance of the petitioner that the delay involved is

huge and the decree holder is prevented from enjoying the fruits of the decree, by the filing of the frivolous application under Section 5 of the Limitation Act.

5. Whether the application filed under Section 5 of the Limitation Act is frivolous or meritorious can be decided only after enquiry being conducted. Therefore, this contention ought to have been raised before the Executing Court / Trial Court and not before this Court. Hence, the Civil Revision Petition is dismissed as not maintainable.

6. Considering the submissions made and in the light of the facts stated, the Court below is directed to dispose of the application filed to condone the delay, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected CMP is closed.

05.02.2016

Index : Yes / No

Web : Yes / No

srk

Note to office.: Issue order copy on 08.02.2016

S.VIMALA, J.,

srk

To

1. I Additional District Munsif, Puducherry
2. The Section Officer, V.R.Section,
Madras High Court, Chennai - 104

C.R.P. (NPD) No.253 of 2016
& C.M.P.No.1198 of 2016

05.02.2016