

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2828 of 2016
and
CMP No.14353 of 2016

D. Rajagopalan (deceased)

1. R. Balaji
2. R. Pattabi Raman
3. R. Lakshmi

... Petitioners

vs

D. Ramanujam (deceased)

1. D. Durairaj
2. Laltha
3. Jeyanthi
4. Soundaravalli @ Soundara
5. Nivedita

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code setting aside the order and decretal order passed in I.A.No.15198 of 2014 in I.A.S.R.No.57778 of 2012 in O.S.No.1470 of 2003 on the file of VIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.K.V. Sanjeev Kumar

For respondents : Mr.R. Muthukumarasamy
Senior Counsel

ORDER

Aggrieved over the order passed in I.A.No.15198 of 2014 in I.A.S.R.No.57778 of 2012 in O.S.No.1470 of 2003 on the file of VIII Assistant Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision Petition.

2. Heard Mr.K.V. Sanjeev Kumar, learned counsel for the plaintiffs and Mr.R. Muthukumarasamy, learned Senior Counsel, appearing for the respondents.

3. The plaintiffs filed a suit in O.S.No.1470 of 2013 to declare the lease, license and business of cinema theatre namely Jeyanthi theatre at L.B. Road, Chennai – 41 and Jeyanthi theatre at Butt Road, Chennai-16 as joint family business, wherein, the plaintiffs have equal right as that of the first and fifth defendants and for a consequential injunction restraining the defendants 3 and 4 from transferring or alienating in any manner the cinema theatre business without the consent of the plaintiffs and the other co-owner.

4. The defendants filed their written statement and were contesting the case.

5. Since the plaintiffs remained absent before the trial court, the trial Court dismissed the suit for default on 03.12.2012. Thereafter, the plaintiffs filed an application in I.A.S.R.No.57778 of 2012 under Order 9 Rule 9 of Civil Procedure Code to restore the suit, which was dismissed for default on 03.12.2012. The Registry of the City Civil Court returned the application for complying with some defects on 03.01.2013. Thereafter, the plaintiffs filed the present application in I.A.No.15198 of 2014 to condone the delay of 610 days in representing the I.A.S.R.No.57778 of 2012.

6. In the affidavit, filed in support of the petition, the plaintiffs have stated that their counsel Mr.K. Ananthakrishnan had died on 09.03.2014 and that they were under the impression that the matter was represented by the counsel. Further, they have stated that while cleaning up the office of the deceased counsel, the returned bundle in the suit was traced and was informed to the plaintiffs, by the brother of the counsel. Thereafter, the plaintiffs filed the present application to represent the papers with the petition to condone the delay of 610 days.

7. The averments stated in the affidavit, filed in support of the petition, were disputed by the defendants in their counter.

8. It is the contention of the plaintiffs that due to the death of their counsel on 09.03.2014, the papers could not be represented in time and that, only after tracing the returned papers in the Office of the deceased counsel, the papers could be represented. It is pertinent to note that the suit was dismissed for default on 03.12.2012 and the application in I.A.S.R.No.57778 of 2012 to restore the suit was filed on 20.12.2012. The application was returned by the Registry for complying with some defects on 03.01.2013. Admittedly, the plaintiffs counsel had died only on 09.03.2014. The plaintiffs have not explained the reasons for not representing the papers from 03.01.2013 to 09.03.2014 i.e., the date on which, the plaintiffs counsel had died. In the absence of any reason, given by the plaintiffs, explaining the reasons for not representing the papers between 03.01.2013 and 09.03.2014, the reasons stated in the affidavit, filed in support of the petition, cannot be accepted.

9. It is a settled position that a party, seeking condonation of delay, should give sufficient cause for the delay. In the case on hand,

the inordinate delay of 610 days in representing the papers was not properly explained by the plaintiffs. The ratio laid down by the Hon'ble Supreme Court in the judgment reported **in 2015 (1) SCC 680 (H. Dohil Constructions Company Private Limited vs Nahar Exports Limited and another)** squarely applies to the facts and circumstances of the present case. Since the plaintiffs have not explained the reasons for the delay, the trial Court had rightly dismissed the application. In these circumstances, I do not find any reason to interfere with the order passed by the trial Court. Hence the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

09-09-2016

sr

Index:no
website:yes

To

The VIII Assistant City Civil Court, Chennai.

M. DURAISWAMY,J.,

sr

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