

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.2944 of 2016
and
CMP No.14942 of 2016

1.G. John
2.Ruthmary
3.David Raj
4.Mary Mallika
Petitioners

...

vs

Srinivasan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders passed in I.A.No.136 of 2015 in I.A.No.436 of 2012 in O.S.No.162 of 2008 dated 06.06.2016 on the file of Subordinate Court, Kancheepuram.

For Petitioner : Mr.M. Vijayakumar

ORDER

Challenging the fair and final order passed in I.A.No.136 of 2015 in I.A.No.436 of 2012 in O.S.No.162 of 2008 on the file of Subordinate Court, Kancheepuram, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.162 of 2008 for declaration and recovery of possession. Since the defendants failed to appear before the trial Court, they were set ex-parte and an ex-parte decree was passed against them on 24.02.2009. Thereafter, the petitioners/defendants filed an application in I.A.No.436 of 2012 to condone the delay of 1142 days in filing the petition to set aside the ex-parte decree. The petition, filed by the defendants, to condone the delay of 1142 days was adjourned from 14.09.2012 to 12.11.2013 for the reason that the plaintiff has not paid batta. Since the defendants failed to pay the batta in the application in I.A.No.436 of 2012, the trial Court dismissed the application for default. Thereafter, the defendants filed an application in I.A.No.136 of 2015 to condone the delay of 286 days in restoring the application in I.A.No.436 of 2012.

3. In the affidavit, filed in support of the petition, the first petitioner has stated that he was suffering from Viral Fever, therefore, he could appear before the trial Court on 12.11.2013. Hence the petition was dismissed for default. Except stating that he was suffering from viral fever, he has not produced any other evidence establishing the said averment. That apart, except the first defendant, the other defendants viz., defendants 2 to 4 have not stated anything about their non-appearance on 12.11.2013.

4. The learned counsel appearing for the petitioners submitted that the delay in filing the application to restore the application in I.A.No.436 of 2012 had occurred only because of the fault committed by the earlier counsel, who appeared on behalf of the defendants before the trial Court.

5. Since this point was not raised in the affidavit, filed in support of the petition in I.A.No.136 of 2015 and it is being raised for the first time in the Civil Revision Petition, the said contention, put forth by the learned counsel for the petitioner, cannot be accepted

and the same is rejected.

6. It is settled position that unless, the party, seeking for condonation of delay, gives sufficient cause for the delay, the delay should not be condoned. The ratio laid down by the Hon'ble Supreme Court 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.

7. Earlier application, filed by the defendants to set aside the ex-parte decree with a delay of 1142 days was dismissed for default. Now, there is a delay of 286 days in restoring the application, filed under Sec.5 of the Limitation Act.

8. Since the defendants have not given sufficient reason for condoning the delay, the trial Court had rightly dismissed the application. Further, the suit was filed in the year 2008 and ever after a lapse of eight years, the same has not yet reached finality. 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 the same is dismissed. No costs. Consequently, connected CMP is closed.

22-09-2016

sr

Index:no
website:yes

To

The Subordinate Court, Kancheepuram.

M. DURAISWAMY,J.,

sr

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