

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.305 of 2016

and

C.M.P.No.1632 of 2016

Annadurai

... Petitioner

vs.

M.Munusamy Pillai

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of the Principal District Munsif, Kanchipuram dated 16.04.2014 made in I.A.No.79 of 2014 in O.S.No.165 of 2015.

For Petitioner : Mr.T.Sathiyamoorthy

ORDER

This revision arises out of an order passed by the trial court condoning the delay of 314 days in preferring an application under Order IX Rule 13 CPC to set aside the ex-parte decree passed against him in the original suit. The defendant in the original suit, in fact, contested the suit by filing a written statement and only at the time of trial, he failed to appear, pursuant to which, he was set ex-parte and an ex-parte decree

came to be passed. While seeking an order setting aside the ex-parte decree citing some illness from which he was suffering, as the reason for his non-appearance on the date fixed for trial. Absence of knowledge of the exparte decree passed in the suit and the said illness are cited as the reasons for the delayed approach to the court with an application under Order IX Rule 13 CPC.

2. The learned trial judge, after hearing, accepted the case of the respondent herein/defendant that the delay was explained with acceptable reasons. However it held that the petitioner herein/plaintiff should be compensated with cost for the delay. Accordingly, the learned trial judge chose to pass an order on 16.04.2014 allowing the said application I.A.No.79 of 2014 filed under Section 5 of the Limitation Act on condition that the petitioner therein (respondent herein) should pay a sum of Rs.1,500/- as cost to the petitioner in the revision/plaintiff in the original suit. Subsequent to the passing of the order, but before the date fixed for payment of the cost, with the permission of the court the cost was deposited in the court to the account of the suit since the petitioner herein was not prepared to accept the cost. The delay is only 314 days and the court below properly exercised its discretion in condoning the delay subject to a condition of payment of cost. The said order cannot be said to be patently erroneous or one passed without jurisdiction or an order showing omission to exercise jurisdiction conferred on the trial court or an order passed in exceeding the jurisdiction conferred on the trial court. The order

also cannot be assailed on the ground that it would encourage abuse of process of court. Hence this court comes to the conclusion that there is no defect or error in the order passed by the trial court warranting interference by this court under Article 227 of the Constitution of India. Hence the civil revision petition deserves to be dismissed at the threshold.

Accordingly, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

09.02.2016

Index : Yes/No
Internet : Yes/No
asr

To

The Principal District Munsif, Kanchipuram

P.R.SHIVAKUMAR, J.

asr/-

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