

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3085 of 2016
and
CMP No.15729 of 2016

M/s Shri Padmavathy Cotton Mills
rep by its Managing Director,
Srivilliputhur Road,
Rajapalayam- 626 117

... Petitioner

vs

T.B. Sudhakaran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.01.2013 made in I.A.No.13602 of 2010 in O.S.No.5416 of 1997 passed by the learned V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R. Thiagarajan

ORDER

Challenging the fair and final order passed in I.A.No.13602 of 2010 in O.S.No.5416 of 1997 on the file of V Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed a suit in O.S.No.5416 of 1997 for recovery of money. Since the defendant failed to appear before the trial Court, they were set ex-parte and an ex-parte decree was passed on 30.09.2003. Thereafter, the defendant filed an application in I.A.No.13602 of 2010 to condone the delay of 2455 days in filing the application to set aside the ex-parte decree dated 30.09.2003.

3. In the affidavit, filed in support of the petition, the defendant has stated that their counsel did not inform them about the ex-parte decree passed on 30.09.2003 and that, the Managing Partner of the Company was suffering from Arthritis from the year 2000. Further, the defendant has stated that the Managing Partner was taking Ayurvedic treatment from 2000 at Rajapalayam.

4. The reasonings, given by the defendant in the affidavit, were disputed by the plaintiff in his counter.

5. The trial Court, taking into consideration the case of both parties, dismissed the application, finding that the reasonings given by the defendant, cannot be accepted. In support of his contention, the defendant has not examined any independent witness to show that his counsel did not inform them about the ex-parte decree passed on 30.09.2003. The defendant has produced Medical Certificate dated 01.05.2012 before the trial Court. In the affidavit, the Managing Partner has also stated that he was suffering from Arthritis and was taking Ayurvedic treatment. But Ex.P.1 Medical Certificate was given by an Orthopedic Surgeon .

6. When the Managing Partner was taking Ayurvedic treatment, producing Medical Certificate from an Orthopedic Surgeon, was not accepted, and was rightly rejected by the trial Court. Since the defendant has not explained the delay in a proper manner, the trial Court had rightly rejected the application. 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. 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.

05-10-2016

sr

Index:no
website:yes

To

The V Assistant Judge, City Civil Court, Chennai.

M. DURAISWAMY,J.,

sr

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