

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3233 of 2016
and C.M.P.No.16397 of 2016

S.Bharathi

... Petitioner

Vs.

1.State Bank of Travancore,
Anna Nagar East Branch,
rep by its Chief Manager,
Chennai - 600 102.

2.P.Kovilpillai

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the judgment and decree dated 22.01.2016 in I.A.No.9228 of 2015 in O.S.No.4431 of 2005 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Ganesh Kumar

ORDER

Challenging the fair and final order passed in I.A.No.9228 of 2015 in O.S.No.4431 of 2005 on the file of the VIII Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.4431 of 2005 for recovery of money.

3.The defendants entered appearance through their counsel before the trial Court. Subsequently, since the defendants failed to file their written statement and remained absent, they were set exparte and an exparte decree was passed on 03.03.2006.

4.Thereafter, the 1st defendant filed an application in I.A.No.9228 of 2015 to condone the delay of 3395 days in filing the application to set aside the exparte decree dated 03.03.2006. In the affidavit filed in support of the petition, the 1st defendant has stated that due to the ill health of his wife, he could not contest the suit and he came to know about the exparte decree passed in the suit only when he received the summons in the Execution Petition. The decree was passed on 03.03.2006, whereas, the present application to set aside the exparte decree was filed only on 22.06.2015. When the defendants had entered appearance through a counsel, they could have contested the matter and verified the pendency of the suit from the counsel. The 1st defendant cannot remain silent for nearly ten years and file the application to set aside the exparte decree stating that he came to know about the exparte decree only when he received summons in the

execution proceedings. Since the delay was not properly explained by the 1st defendant, the trial Court dismissed the application.

5.It is settled position that unless the petitioner seeking for condonation of delay shows sufficient cause for the delay, the delay should not be condoned.

6.The ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 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.In these circumstances, the dismissal of the application by the trial Court is just and proper. 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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20.10.2016

M.DURAIWAMY, J.
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To
The VIII Assistant Judge,
City Civil Court,
Chennai.

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