

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3264 of 2016
and C.M.P.No.16588 of 2016

1.Vasanthi

2.Kuppusamy Padayachi

3.Narashimman

... Petitioners

Vs.

Sarangan

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 09.06.2016 passed in I.A.No.130 of 2015 in O.S.No.198 of 2010 on the file of the II Additional Sub Court, Villupuram.

For Petitioners : Mr.T.Dhanyakumar

For Respondent : Mr.N.Suresh

ORDER

Challenging the fair and final order passed in I.A.No.130 of 2015 in O.S.No.198 of 2010 on the file of the II Additional Sub Court, Villupuram, the defendants have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.198 of 2010 claiming a sum of Rs.1,18,910/- together with interest as damages.

3.The defendants filed their written statement and were contesting the suit. Subsequently, the defendants remained absent and hence, an exparte order was passed on 15.11.2011 and thereafter, the defendants filed an application in I.A.No.817 of 2011 to set aside the exparte order, which was allowed by the trial Court on 23.12.2011. Subsequently, again the defendants remained absent before the trial Court, hence, they were set exparte and an exparte decree was passed on 19.02.2013. Pursuant to the decree passed in O.S.No.198 of 2010, the plaintiff filed an Execution Petition in E.P.No.66 of 2014. The defendants appeared before the Executing Court on 06.06.2014. Thereafter, on 20.10.2014, the defendants filed an application in I.A.No.130 of 2015 to condone the delay of 578 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the 1st defendant has stated that they entered appearance in the suit through a local counsel and that they were asked to sign in some papers and their counsel informed that he will enlighten them as and when necessary. Further, it has been stated in the affidavit that the 1st defendant's husband was seriously ill and she was taking care of him.

4.The suit was filed in the year 2010 and the exparte decree was passed on 19.02.2013. The revision petitioners/defendants entered appearance in the Execution Petition in E.P.No.66 of 2014 on 06.06.2014, that means, they would have received the summons in the Execution Petition much prior to 06.06.2014. Inspite of the same, the defendants chose to file the application to set aside the exparte decree only on 20.10.2014 (i.e.) at least four months after entering appearance in the Execution Petition. The reasons for the delay in filing the application to set aside the exparte decree between 06.06.2014 and 20.10.2014 was not explained by the defendants. In the absence of any reason given by the defendants for condoning the delay of 578 days, the trial Court has rightly dismissed the petition. Further, in the affidavit, the 1st defendant has not stated when her husband fell ill and when he became alright. The averment stated in the affidavit are very bald and bereft of details. Taking into consideration all these aspects, in the absence of sufficient reason given by the defendants, the trial Court has rightly dismissed the petition.

5.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 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
va

14.11.2016

To

1.The II Additional Sub Court,
Villupuram.

M.DURAISWAMY,J.
va

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