

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3362 of 2016
and CMP No.17160 of 2016

Narayanappa

... Petitioner

vs

1. Krishnappa
2. Venkatesh
3. Jayaram
Respondents

....

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order in I.A.No.166 of 2015 in O.S.No.02 of 2013 on the file of Additional District Court, Hosur dated 17.09.2016

For Petitioner : Ms.R. Poornima

ORDER

Challenging the fair and final order passed in I.A.No.166/2015 in O.S.No/2 of 2013 on the file of Additional District Court, Hosur,

the third defendant has filed the above Civil Revision Petition.

2. The first respondent/plaintiff filed a suit in O.S.No.2 of 2013 for partition. The third defendant entered appearance through an Advocate before the trial Court and was taking time for filing written statement. Before the trial Court, the third defendant took adjournments on 21.03.2013, 17.04.2013, 08.06.2013, 02.07.2013 and 24.07.2013 for filing written statement. On 29.07.2013, the counsel, appearing for the third defendant reported no instructions. Therefore, the third defendant was set ex-parte and an ex-parte preliminary decree was passed on 05.09.2013. Pursuant to the preliminary decree passed in the suit in O.S.No.2 of 2013, the plaintiff filed Final Decree application in I.A.No.26 of 2015. In the Final Decree application, the third defendant received notice on 24.02.2015 and engaged a counsel to appear on his behalf. In the Final Decree application, the third defendant's counsel filed her vakalat on 04.03.2015. Even in the final decree application, the third defendant was taking time for filing counter.

3. Thereafter, on 07.09.2015, the third defendant filed an

application in I.A No.166 of 2015 to condone the delay of 703 days in filing the application to set aside the ex-parte preliminary decree passed on 05.09.2013.

4. The learned counsel appearing for the petitioner submitted that the counsel, who was engaged by the third defendant in the Final Decree application, has become a Judicial Officer and therefore, the application to set aside the ex-parte decree could not be filed in time. When the third defendant had received the notice in the Final Decree application on 24.02.2015 and his counsel had entered appearance on 04.03.2015, the contention, raised by the learned counsel for the petitioner, cannot be accepted. At least, on 24.02.2015, the third defendant had the knowledge about the ex-parte preliminary decree passed on 05.09.2013. The third defendant has not stated anything about the contention raised by the learned counsel for the petitioner before this Court that his counsel was appointed as Judicial Officer.

5. In the absence of any acceptable reason, given by the petitioner/third defendant, the trial Court has rightly dismissed the

application, The ratio laid down by the Hon'ble Supreme Court reported in **2015 (1) SCC 680 (H. Dohil Constructions Company**

M. DURAISWAMY,J.,

sr

Private Limited vs Nahar Exports Limited and another) squarely applies to the facts and circumstances of the present case. 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.

03-11-2016

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Index:no
website:yes
To

The Additional District Court, Hosur

CRP(NPD)No.3362 of 2016

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