

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3479 of 2016
and CMP No.17730 of 2016

Don Bosco

... Petitioner

VS

Godfrey D. Monte @ Godfrey
Albinus D. Monte

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order made in I.A.No.13901 of 2014 in O.S.No.4382 of 2011 dated 12.09.2016 on the file of V Assistant Judge, City Civil Court, Chennai in dismissing the application filed under Section 5 of Limitation Act to condone the delay of 734 days in filing the setting aside petition.

For Petitioner : Mr.R. Dhamodaran

For respondent : Mr..A.M. Krishnamurthy

ORDER

Challenging the fair and final order passed in I.A.No.13901 of 2014 in O.S.No4382 of 2011 on the file of V Assistant Judge, City Civil Court,

Chennai, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.4382 of 2011 for recovery of possession, permanent injunction, mandatory injunction and for other reliefs. The defendant received the summons in the suit and also engaged M/s K. Sivakumar and Ms.T. Sangeetha, Advocates to appear on his behalf before the trial Court. The counsels, appearing on behalf of the defendant, also filed their vakalat before the trial Court on 15.07.2011. Thereafter, the suit was posted for filing of written statement by the defendant. Since the defendant did not file any written statement before the trial Court, he was set ex-parte and an ex-parte decree was passed on 05.07.2012. Thereafter, in August 2014, the defendant filed an application in I.A.No.13901 of 2014 to condone the delay of 734 days in filing the application to set aside the exparte decree.

3. In the affidavit, filed in support of the petition, the defendant has stated that his original name is Sundaramurthy and his neighbours and friends used to call him as Don Bosco. Further, he has stated that since his name has been mentioned as Don Bosco, there was some confusion in the service of notices and summons. Further, he has stated that he came to know about the exparte decree only when he received the notice in E.P.Nos.2974 and 2976 of 2013 on 25.4.2014.

4. The averments stated the affidavit, cannot be accepted for the reason that inspite of mentioning the defendant's name as Don Bosco, he received summons and also engaged counsels to appear on his behalf.

5. The learned counsel appearing for the respondent/caveator produced certified copy of the vakalat filed by the defendant before the trial Court. Even in the vakalat, the defendant mentioned his name as Don Bosco @ Sundaramurthy. When the defendant had received summons and also engaged counsels, to appear on his behalf before the trial Court, the averments stated the affidavit cannot be accepted. That apart, when the defendant had received the summons on 25.04.2014 in E.P.Nos.2974 and 2976 of 2013, he chose to file the application to set aside the ex-parte decree only in August 2014. The reasons for the delay was not properly explained by the defendant. In the absence of sufficient reasons, given by the defendant, the trial Court has rightly dismissed the application.

6. It is a settled position that unless, the party, seeking for condonation of delay, gives sufficient cause for the delay, the delay should not be condoned. 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

M. DURAISWAMY,J.,

sr

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.

14-11-2016

sr

Index:no
website:yes

To

The V Assistant City Civil Court, Chennai

CRP(NPD)No.3479 of 2016

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