

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2016
Coram

The Hon'ble Mr.Justice M.DURAISWAMY

CRP(NPD)NO.3631 of 2016
and C.M.P.No.18522 of 2016

Elumalai

...Petitioner

Vs

K.Venkatesan

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order made in I.A.No.1289 of 2014 in O.S.No.745 of 1988 on the file of the District Munsif Court, Ponneri dated 23.07.2015.

For Petitioner : Mr.R.Krishnasway

ORDER

Challenging the fair and decreetal order passed in I.A.No.1289 of 2014 in O.S.No.745 of 1988 on the file of the District Munsif Court, Ponneri dated 23.07.2015, the defendant has filed the above Civil Revision Petition.

2. The plaintiff has filed the suit in O.S.No.745 of 1988 on the file of the District Munsif Court, Ponneri for recovery of possession and for mesne profits. Since the defendant remained absent before the trial Court, he was set exparte and an ex-parte decree was passed in the suit on 21.06.1996. Thereafter, in the year 2013, the defendant filed an application in I.A.No.1289 of 2014 to condone the delay of 6292 days in filing the application to set aside the exparte decree.

3. Pursuant to the decree passed in O.S.No.745 of 1988, the decree holders filed an Execution Petition in E.P.No.42 of 2011. In the affidavit filed in support of the application, the defendant had stated that he was suffering from various illness including Jaundice and was taking native treatment and therefore, he was not in a position to meet his counsel. Further, he has stated that when he went to Chennai to attend a relative's function, his family members informed that delivery was ordered by the trial Court. The defendant has stated that only after the information given by his family members, he came to know about the exparte decree passed in the suit.

4. When the defendant had filed his written statement as early as

on 10.07.1989 before the trial Court, the defendant cannot take a stand that he came to know about the exparte decree only recently. That apart, even without mentioning the date on which he fell ill and when he became alright, the present affidavit has been filed to condone the inordinate delay of 6292 days in filing the application to set aside the exparte decree. The affidavit filed by the defendant is very bald and bereft of details. In the absence of sufficient cause shown by the defendant, the trial Court has rightly dismissed the application. It is settled position that unless the party seeking for condonation of delay shows sufficient cause, the delay should not be condoned.

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 the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

24.11.2016

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To
The District Munsif Court, Ponneri

M.DURAI SWAMY,J

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