

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3638 of 2016
and CMP No.18527 of 2016

1. Govindan
2. Chinnasami
3. Periyasami
4. Ramakrishnan
5. Mathammal
Petitioners

...

vs

T. Chandran

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and final order dated 05.10.2016 made in I.A.No.184 of 2016 in O.S.No.171 of 2012 on the file of District Munsif Court, Palacode.

For Petitioners : MrK.S. Karthik Raja

ORDER

Challenging the fair and final order passed in I.A.No.184 of 2016 in O.S.No.171 of 2012 on the file of District Munsif Court, Palacode, the defendants have filed the above Civil Revision Petition.

2. The respondent/plaintiff filed the suit in O.S.No.171 of 2012 for declaration, mandatory injunction and permanent injunction. Since the defendants failed to appear before the trial Court,, they were set ex-parte and an ex-parte decree was passed on 04.12.2012.

3. Pursuant to the decree passed in the suit in O.S.No.171 of 2012, the plaintiff filed an Execution Petition in E.P.No.20 of 2013 and the defendants entered appearance through their counsel on 28.10.2013. Thereafter, when the Executing Court ordered delivery, the defendants filed an application in I.A.No.184 of 2016 on 18.02.2016 to condone the delay of 1140 days in filing the application to set aside the ex-parte decree.

4. In the affidavit, filed in support of the petition, the defendants have stated that they came to know about the ex-parte decree only when they received the Notice in the Execution Petition. Thereafter, they contacted their counsel, however, their counsel informed that the papers have got mixed up with some other bundle and have been misplaced. Further, they have stated that subsequently, their counsel had passed away, therefore, they were not in a position to file the application to set aside the ex-parte

decree in time.

5. When the defendants entered appearance in the Execution Petition in E.P.No.20 of 2013 on 28.10.2013 itself, it is clear that they have the knowledge about the ex-parte decree passed in O.S No.171 of 2012 atleast on that day. Inspite of entering appearance in the Execution Petition, they chose to file the application to set aside the ex-parte decree only on 18.02.2016.

6. In the affidavit, filed in support of the petition, the defendants have not mentioned a single date with regard to the death of their counsel, when the papers have got mixed up and when the papers could be traced by the counsel.

7. The affidavit, filed in support of the petition, is very bald and bereft of materials. In these circumstances, the trial Court has rightly declined to condone the inordinate delay of 1140 days in filing the application to set aside the ex-parte decree.

M. DURAISWAMY,J.,

sr

8. It is a settled position that unless sufficient cause is shown by the party, the delay cannot be condoned. In the case on hand, in the absence of sufficient reasons, given by the defendants for condonation of the inordinate delay of 1140 days, the trial court has rightly dismissed the application. 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.

22-11-2016

sr

Index:no
website:yes

To
The District Munsif Court, Palacode

CRP(NPD)No.3638 of 2016

<http://www.judis.nic.in>