

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2890 of 2013
and M.P.No.1 of 2013

V.Amutha

... Petitioner

Vs.

1.Venkatesan

2.Krishnaveni

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the judgment and decree dated 15.11.2012 made in I.A.No.214 of 2012 in O.S.No.493 of 2008 on the file of the Principal District Judge, Chengalpattu.

For Petitioner : Mrs.V.J.Latha

For Respondents : Mr.R.Vijayaraghavan

ORDER

Challenging the fair and final order passed in I.A.No.214 of 2012 in O.S.No.493 of 2008 on the file of the Principal District Judge, Chengalpattu, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.493 of 2008 for declaration and recovery of possession.

3. Since the defendants failed to appear before the trial Court, the trial Court passed an ex parte decree on 02.03.2010. Thereafter, the defendants filed an application in I.A.No.214 of 2012 to condone the delay of 750 days in filing the petition to set aside the ex parte decree dated 02.03.2010. In the affidavit filed in support of the petition, the defendants have stated that the 1st defendant's father was suffering from cardiac problem and kidney failure and therefore, the defendants went to their native place at Tirunelveli District to take care of the 1st defendant's father. Further, they have stated that the 2nd defendant was also taking treatment under a Gynecologist. That apart, the defendants have stated that they came to know about the ex parte decree only when they received summons in the Execution Petition in E.P.No.10 of 2011. The plaintiff filed her counter disputing the averments stated in the affidavit filed in support of the petition. The trial Court allowed the application stating that the delay should be condoned in order to give a fair chance to proceed with the case.

4. Admittedly, the defendants have not produced any documents before the trial Court to establish the averments stated in the affidavit filed in support of the petition. When the 1st defendant was taking treatment for

cardiac and kidney ailments, the defendants have not produced a single document to prove the said contention. Even in the counter filed by the plaintiff, the plaintiff has stated that the defendants have not produced any document to show that the 1st defendant's father was suffering from cardiac and kidney problem and that the 2nd defendant was also taking treatment. In spite of the specific averment stated in the counter affidavit of the plaintiff, the defendants chose not to file any document before the trial Court. The trial Court recorded that no document was produced by the defendants to establish their case. In spite of the same, the trial Court condoned the delay of 750 days without any acceptable reason.

5.The learned counsel for the respondents submitted that a liberal approach should be shown for condoning the delay in filing the petition to set aside the exparte decree. In support of his contentions, the learned counsel relied upon the following judgments:

(i) **1999 1 Supreme Court Cases 114 [N.Balakrishnan Vs. M.Krishnamurthy]**

(ii) **1999 3 MLJ 261 [V.Amudha Vs. S.A.Arumugham and others]**

(iii) **2006 (1) CTC 191 [S.Mohan, S/o. Late P.Subramani, No.4, Adishesan Nagar, 3rd Street, Main Road, Madras - 12 Vs. Cruz Mary, 4/183, Burma Colony, Gandhi Nagar, Vellore - 6 and another]**

In these judgments, the Apex Court as well as this Court held that if sufficient cause is shown by the party who seeks for condonation of the delay, the Courts should be liberal in condoning the delay. In the case on hand, the defendants have not shown sufficient cause for condoning the inordinate delay of 750 days.

6. In spite of the plaintiff taking a specific stand in the counter statement that the defendants have not produced any medical certificate to establish their contention in the affidavit filed in support of the petition, the defendants chose not to file any document before the trial Court to establish the averments stated in the affidavit filed in support of the petition. In spite of the failure on the part of the defendants to prove the contention by any acceptable evidence, the trial Court was very liberal in condoning the inordinate delay of 750 days, that too, without any acceptable reason.

7. It is settled position that unless a party seeking for condonation of the delay shows sufficient cause for condoning the delay, the delay cannot be condoned. In the case on hand, in the absence of any acceptable reason shown by the defendants to condone the inordinate delay of 750 days, the

same cannot be condoned. Therefore, the fair and decreetal order passed in I.A.No.214 of 2012 in O.S.No.493 of 2008 are liable to be set aside. Accordingly, the same are set aside.

8.In the result, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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18.01.2016

To

The Principal District Judge,
Chengalpattu.

M.DURAIWAMY,J.
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