

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.499 of 2016
and
CMP No.2591 of 2016

V. Gnanasekaran

.... Petitioner

vs

1.Santhi
2.Vinayagam
3.Balasubramaniam
4.Muniammal
5.Thilagam
6.Mahalakshmi
7.Adhilakshmi
8.Karpagavalli
9.The Nungambakkam Sasuvatha Dhana Rakshaga
Nidhi Limited rep by its Secretary,
No.11, Ramanayakken Street,
Chennai – 600 034

.... Respondents

Civil Revision Petition filed under 227 of the Constitution of India against the order and decretal order dated 6.11.2015 in I.A.No.92 of 2015 in O.S.No.339 of 2004 on the file of Additional District and Sessions Court, Chengalpattu.

For Petitioner : Mr.R. Thanjan

ORDER

Challenging the fair and final order passed in I.A.No.92/2015 in O.S.No.339 of 2004 on the file of Additional District and Sessions Court at Chengalpattu, the third defendant has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.339 of 2004 for partition. Since the defendants failed to appear before the trial court, they were set ex-parte and a preliminary decree was passed. In the suit, the defendants 1 to 9 remained absent, however, the 10th defendant contested the suit. Thereafter, the third defendant filed an application in I.A.No.1122 of 2006 to set aside the ex-parte decree passed in the suit. The said application was dismissed on 03.07.2007. Thereafter, the third defendant filed an application in I.A.No.156 of 2009 to restore the application in I.A.No.1122 of 2006, which was dismissed on 03.07.2007. Though I.A. No.156 of 2009 was filed on 23.07.2007, the same was numbered only in the year 2009 and the application in I.A.No.156 of 2009 was dismissed for default on 13.06.2011.

3. Thereafter, the third defendant filed an application in I.A.No.92 of 2015 to condone the delay of 1232 days in filing the

petition to restore I.A.No.156 of 2009, which was dismissed for default on 13.06.2011. In the affidavit, filed in support of the petition, the third defendant had stated that he was suffering from diabetes and blood pressure and he was bedridden for eight months and hence he could not file the application to restore I.A.No.156 of 2009 in time. The plaintiff filed her counter and contested the petition. The trial Court, taking into consideration the case of both the parties, dismissed the application finding that the third defendant has not produced any document to show that he was bedridden for the past four years and was suffering from ailments.

4. The third defendant repeatedly remained absent before the trial Court and the applications, filed by him, were dismissed for default on various occasions. Now, after a lapse of 1232 days, the application in I.A.No.92 of 2015 has been filed by the third defendant to restore the application in I.A.No.156 of 2009, filed in I.A.No.1122 of 2006 in O.S.No.339 of 2004. Without any evidence to establish the averments stated in affidavit, filed in support of the petition, the third defendant seeks to condone the delay of 1232 days.

5. The Apex Court repeatedly held that in the absence of

M. DURAISWAMY,J.,

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sufficient cause shown by the parties, the delay should not be condoned. In the case on hand, the third defendant has not given sufficient cause to condone the inordinate delay of 1232 days.

6. In these circumstances, the trial Court has rightly dismissed the application in I.A.No.92 of 2015. I do not find any error or irregularity in the order passed by the trial court and the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

17-06-2016

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Index:no
website:yes

To
The Additional District and Sessions Court,
Chengalpattu

C.R.P(NPD)No.499 of 2016