

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-08-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4258 of 2009

Settu @ Rajendran

... Petitioner

vs

Sri Rangan

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order in I.A.No.1123/2008 in O.S.No.19/2004 on the file of Principal District Munsif Court, Ulundurpet dated 07-09-2009.

For Petitioner : Mr.V. Raghavachari

ORDER

Challenging the fair and final decree passed in I.A.No.1123 of 2008 in O.s.No.19 of 2004 on the file of Principal District Munsif Court, Ulundurpet, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.19 of 2004 for declaration, recovery of possession and mesne profits. Since the defendant failed to appear before the trial court, the trial court set him ex-parte and an ex-parte order was passed on 08.08.2005. Thereafter, the defendant filed an application in I.A.No.1123 of 2008 to condone the delay of 1178 days in filing the petition to set aside the exparte decree.

3. In the affidavit, filed in support of the petition, the defendant has stated that since he was employed in some other place, the letter, written by his counsel, informing about the passing of an exparte decree, was not communicated to him by his family members. Hence, according to the defendant, there is a delay of 1178 days in filing the petition to set aside the exparte decree. Further, he has stated that he came to know about the passing of the exparte decree only on 03.11.2008.

4. When the defendant was well aware of the pendency of the suit, he cannot remain silent for more than three years in filing the petition to set aside the exparte decree. The defendant should have

been diligent in contesting the matter in a proper manner. The conduct of the defendant would clearly establish that he was not diligent in contesting the matter in a proper manner. The reasoning given by the defendant for condoning the inordinate delay of 1178 days was not properly explained.

5. It is a settled position that a party, seeking condonation of delay, is duty bound to explain the reasons for the delay in an acceptable manner. In the absence of sufficient cause, shown by the party, 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 circumstances of the present case.

6. In the case on hand, the defendant had not given sufficient reason for condoning the inordinate delay of 1178 days. In the absence of sufficient cause, shown by the plaintiff, the trial Court had rightly dismissed the application. In these circumstances, I do

M. DURAISWAMY,J.,

sr

not find any reason to interfere with the order passed by the trial Court. Hence the Civil Revision Petition is liable to be dismissed as devoid of merits and accordingly, the same is dismissed. No costs.

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Index:no
website:yes

To

The Principal District Munsif Court, Ulundurpet

CRP(NPD)No.4258/2009