

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.994 of 2016
and C.M.P.No.5608 of 2016

1.O.Arumugam

2.K.Marimuthu

... Petitioners

Vs.

A.Krishnan

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 12.01.2016 passed in I.A.No.650 of 2012 in O.S.No.145 of 2003 on the file of the Subordinate Court, Tiruchengode.

For Petitioners : Mr.Venkatasamy Babu

ORDER

Challenging the fair and final order passed in I.A.No.650 of 2012 in O.S.No.145 of 2003 on the file of the Subordinate Court, Tiruchengode, the defendants have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.145 of 2003 for recovery of money.

3. Since the defendants remained absent before the trial Court, the trial Court decreed the suit *ex parte* on 19.10.2004. Thereafter, the defendants filed an application in I.A.No.650 of 2012 to condone the delay of 1931 days in filing the petition to set aside the *ex parte* decree. In the affidavit filed in support of the petition, the defendants have stated that the 1st petitioner is a handicapped person and that he cannot move anywhere without the assistance of a third person. Though the 1st petitioner has stated that he is a handicapped person and cannot move around, there is no averment in the affidavit filed in support of the petition with regard to the 2nd petitioner. The other ground raised in the affidavit is that the defendants' counsel did not inform them about the *ex parte* decree passed in the suit. Further, the 1st petitioner has stated that he came to know about the *ex parte* decree only when he received notice in the Execution Petition. When the 2nd defendant was very much available to contest the matter and also to file an application to set aside the *ex parte* decree, the 1st petitioner has not stated anything about him. In the absence of sufficient cause shown by the parties, the delay cannot be condoned. In the case on hand, the reasoning given by the petitioners for condoning the inordinate delay of 1931 days cannot be accepted. The trial Court has rightly dismissed the

application.

4.The ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]** squarely applies to the facts and circumstances of the present case.

5.In view of the same, I do not find any reason to interfere with the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

01.08.2016

To

The Subordinate Court,
Tiruchengode.

M.DURAIWAMY,J.
va

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