

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2519 of 2004

Palanisamy @ Ganesan

... Petitioner

Vs.

1.Thangammal
2.Chinnathambi Gounder
3.Periyasamy
4.Thangavel
5.Kolandasamy
6.Nallammal

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and final order dated 17.02.2004 made in I.A.No.1226 of 2002 in O.S.No.650 of 1995 on the file of the 1st Additional Subordinate Court, Erode.

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.A.K.Kumarasamy (R1)

R2 to R6 - no appearance

ORDER

Challenging the fair and final order passed in I.A.No.1226 of 2002 in O.S.No.650 of 1995 on the file of the 1st Additional Subordinate Court, Erode, the defendant has filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.650 of 1995 for partition. Since the defendant failed to appear before the trial Court, the trial Court set him exparte and passed an exparte decree on 27.09.1996.

3.Thereafter, the defendant filed an application in I.A.No.1226 of 2002 to condone the delay of 2242 days in filing the application to set aside the preliminary decree. In the affidavit filed in support of the petition, the defendant has stated that after receiving the notice in the suit, he engaged a counsel to defend his case. Further, he has stated that he was suffering from Liver ailment and was taking treatment and since he was held up in the hospital, he could not defend the suit. Further, he has stated that while passing the exparte decree on 27.09.1996, he was taking treatment in the hospital and thereafter, he engaged some other counsel, who filed the present application to condone the delay of 2242 days. The averment stated in the affidavit filed in support of the petition was disputed by the plaintiffs in their counter.

4.The trial Court, taking into consideration the case of both parties, dismissed the application finding that the reasoning given by the defendant cannot be accepted.

5. Merely saying that he was taking treatment in the hospital at the time of passing of the ex parte decree, the defendant has not explained the reasons for the delay from the date of ex parte decree till the date of filing of the application. Since the delay is inordinate and the same was also not properly explained by the defendant, the trial Court had rightly dismissed the application.

6. Mr. V.P. Sengottuvel, learned counsel appearing for the revision petitioner, in support of his contention, relied upon a judgment reported in ***(2012) 12 Supreme Court Cases 693 [B. Madhuri Goud Vs. B. Damodar Reddy]*** wherein the Hon'ble Supreme Court held that "sufficient cause" for delay must be liberally viewed in a pragmatic manner to subserve the ends of justice and the discretion to condone the delay should be based not on length of delay but on sufficient cause.

7. In the case on hand, except saying that he was taking treatment at the time of passing ex parte decree, the defendant has not explained the delay of 2242 days from the date of passing of the ex parte decree till the date of filing of the application under Order 9 Rule 13 of the Civil Procedure Code. In the absence of sufficient cause shown by the defendant, the

application was rightly rejected by the trial Court. 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.

8. In these circumstances, 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

Index : No
Internet : Yes
va

15.07.2016

To

The 1st Additional Subordinate Court,
Erode.

M.DURAIWAMY,J.
va

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