

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Daed: 02.08.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.4745 of 2012
and
M.P.No.1 of 2012

T.Kumar

.. Petitioner

Vs

Kannammal

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Final Order dated 19.10.2012 made in I.A.No.608 of 2012 in O.S.No.112 of 2009, on the file of the Sub-Court, Pollachi and prays to set aside the same.

Petitioner : Mr.P.Saravana Sowmiyan

Respondent: Mr.A.C.Kumaragurubaran

ORDER

The defendant in O.S.No.112 of 2009 is the civil revision petitioner before this Court.

2. The case of the plaintiff is that he has filed the suit in O.S.No.112 of 2009, before the learned Sub-Court, Pollachi, for recovery of amount of Rs.2,38,466/- and further interest for the principal amount of Rs.2,00,000/- at the rate of 12% per annum from the date of plaint till the date of realization of the said amount.

3. The defendant also filed written statement, but the said suit was decreed exparte on 12.04.2010.

4. The petitioner / defendant has filed an application to set aside the exparte decree dated 12.04.2010 with the delay of 649 days in filing the set aside application.

5. The case of the petitioner is that though the suit was filed against the petitioner / defendant by the respondent / plaintiff and

the suit was also posted for hearing on 09.03.2010. On the said date, though the petitioner is working as a Teacher in a school, he was informed by the higher authority that on the said date i.e. 09.03.2010, the higher officer of the Educational Department has visited the school and accordingly he was directed by the School authority to stay in the school and hence he could not able to attend the Court on 09.03.2010. Due to non appearance of the petitioner on 09.03.2010, the trial Court namely Sub Court, Pollachi, has passed the exparte order against the petitioner / defendant and the case has been posted on 12.04.2010 for exparte evidence. Accordingly, on 12.04.2010 an exparte decree was passed against the petitioner/defendant, since either the petitioner or his counsel have not appeared before the Court.

6. As per the exparte decree dated 12.04.2010 the petitioner would have filed petition on or before 11.05.2010, but due to his school work, he could not able to approach the trial Court and filing the application within the time limit. Therefore, there is a delay of 284 days and hence, he filed an application and prayed the trial Court for condone the delay of 284 days in filing the set aside the exparte decree application.

7. The counter affidavit filed by the respondent / plaintiff in the said I.A.No.608 of 2012. In the counter, it is stated that the total delay is 649 days in filing the set aside application and not 284 days as stated by the petitioner in the affidavit.

8. Apart from this, the respondent / plaintiff also come forward by saying that originally the case was posted on 09.02.2010, thereafter on 09.04.2010 and finally on 12.04.2010. But, without noting the proper date of the hearing of the case, the petitioner/defendant says that he was set exparte on 12.04.2010 and exparte decree was passed on 19.10.2012.

9. The respondent / plaintiff also states that thereafter the petitioner/defendant has filed E.P. and the same was posted on 29.08.2011, but on receipt of the notice in the E.P., he has not filed any application for setting aside the exparte decree. But, he filed the set aside application only on 21.02.2012, but the said application also not numbered, since there was a defect in the said application. Hence, the attachment order was passed on 31.07.2012. Thereafter, only on 07.08.2012, this petitioner / defendant has filed the application. Therefore, he prayed the Court to dismissed the

application filed for condone delay.

10. Considering both side arguments, the learned Judge namely Sub-Judge, Pollachi has dismissed the application on the ground that he has not given any valid reason for the huge delay of 649 days in filing the set aside application. The reason assigned by the petitioner in his affidavit in I.A.No.608 of 2012 is not sufficient and each and every day delay should be explained by the petitioner, but that was not done. Therefore, the trial Court has dismissed the application on 19.10.2012, challenging the said order, the present civil revision petition has been filed by the petitioner / defendant before this Court.

11. I heard Mr.P.Saravana Sowmiyan, learned counsel appearing for the petitioner and Mr.A.C.Kumaragurubaran, learned counsel appearing for the respondent.

12. When the matter was taken up for admission by this Court, an order has been passed on 08.01.2013 that an order of interim stay was granted on condition that the petitioner should deposit a sum of Rs.50,000/- to the credit of O.S.112 of 2009, on or before 30.01.2013, this Court was also passed an order that it is made clear that failure to make the payment, will result in the stay granted today

getting vacated automatically without further reference to this Court.

13. Pursuant to the order passed by this Court, this petitioner / defendant had deposited the said amount of Rs.50,000/- on 29.01.2013 as directed by this Court on 08.01.2013, to that effect, he has also produced the deposit receipt before this Court. Convinced by the nature of the reason assigned in the condone delay petition by the petitioner / defendant and in the interest of justice, I am inclined to give an opportunity to the petitioner / defendant in allowing the civil revision petition, by setting aside the condone delay petition, on condition that the petitioner shall deposit further amount of Rs.1,00,000/- within a period of four weeks from the date of receipt of a copy of this order, failing which this civil revision petition is automatically dismissed without any further reference to this Court.

14. In the result, (a) the civil revision petition is allowed by setting aside the order passed in I.A.No.608 of 2012 in O.S.No.112 of 2009, on the file of the Subordinate Court, Pollachi, dated 19.10.2012, on condition that the petitioner should deposit further amount of Rs.1,00,000/- in to the credit of O.S.No.112 of 2009, within a period of four weeks from the date of receipt of the copy of the order, failing which the civil revision petition is dismissed

automatically without further reference to this Court; (b)the trial Court namely Sub-Court, Pollachi, is hereby directed to number the set aside application and pass orders within a period of one month by giving opportunity to both parties; (c)thereafter on the order passed in the set aside application, the trial Court is directed to dispose the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2016

vs

Note:Issue order copy on 21.11.2016

Index:Yes/No.

Internet:Yes/No

To

The 1st Additional District Munsif,
Coimbatore.

M.V.MURALIDARAN,J.

vs

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and
M.P.No.1 of 2012

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