

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

C.R.P. (N.P.D).1426 of 2017 and

C.M.P.No.6612 of 2017

Murugan

...Petitioner

versus

Kamatchi Ammal

...Respondent

PRAYER: Civil Revision Petition filed under section 115 of the Code of Civil Procedure praying to set-aside the order passed in I.A.464/2016 in O.S.482/1998 dated 22.10.2016 by the Additional District Munsif, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.K.G. Senthil Kumar

ORDER

The petitioner has filed the present Civil Revision Petition challenging the dismissal order dated 22.10.2016 passed in I.A.No.464 of 2016 in O.S.No.482 of 1998, by the learned District Munsif, Cheyyar, Thiruvannamalai District dated 22.10.2016 in IA.No.464 of 2016 which was filed for condoning the delay of 4093 days in filing a petition to set aside the exparte judgment and decree passed in O.S.No.482 of 1998.

2. The learned counsel for the petitioner submits that the

respondent filed a suit for declaration and permanent injunction against the petitioner. In the aforesaid suit, the petitioner was set *ex-parte and ex-parte* decree was passed on 23.02.2005. Thereafter, the respondent has filed an Execution Petition in E.P.No.15 of 2015. At this stage the petitioner has filed an application to condone the inordinate delay of 4093 days in filing the petition to set aside the *ex-parte* decree passed in the aforesaid suit. However, not satisfied with the reasons stated in the affidavit, the Court below has dismissed the said application. Hence, the petitioner prays this Court an opportunity may be given to the petitioner to adjudicate the matter on merits and to condone the delay and set aside the impugned order passed in the aforesaid IA.No.464 of 2016.

3. I have considered the submissions made by the learned counsel for the petitioner and perused the materials available on record.

4. It is seen that the respondent filed the suit for declaration and permanent injunction against the petitioner. The suit was posted for hearing on 23.02.2015, and on that day, the petitioner had not appeared for the hearing. Hence, the trial Court passed *ex-parte* decree against the petitioner. Thereafter, the petitioner

has not chosen to approach the trial Court within the time prescribed to set-aside the *ex-parte* decree. The respondent herein filed the Execution Petition in E.P.No.15 of 2015 before the learned District Munsif at Cheyyar and after receipt of the summons, the petitioner filed the present IA.No.464 of 2016 stating that the petitioner had not appeared on 23.02.2005 because of the injury sustained by him due to the hit by a cow. Therefore, he was not in position to contact the counsel to take steps to set aside the *ex-parte* decree. Subsequently, the petitioner also suffered with Jaundice. In view of the above said reasons, the inordinate delay had occurred in filing the application to set aside the *ex-parte* decree, before the Court below. On a perusal of the documents, it is seen that the petitioner has not produced any reliable document before the Court below to prove the injury and illness and also the treatment taken by him for the same. The petitioner has not chosen to produce any material or furnish any particulars to the delay in filing the application to prove the sufficient cause shown in the affidavit for.

5. Moreover, the Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in ***(2015) 1 SCC 680***, has held as follows:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

6. In the light of the aforesaid Judgment of the Hon'ble Apex Court and also considering the facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the order passed in I.A.No.464 of 2016 in O.S.No.482 of 1998 on the file of the Additional District Munsift Court, Cheyyar, Thiruvannamalai, is hereby confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2017

Speaking order/Non Speaking order

Index:Yes/No
Internet: Yes/No
jv/klt

To

The District Munsif,
Cheyyar, Thiruvannamalai.

D.KRISHNAKUMAR.J,

jv/klt

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