

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1270 of 2014
& M.P.No.1 of 2014

V.Palani

... Petitioner

Vs.

R.Karunanidhi

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the C.P.C., 1908, against the fair and decretal order dated 16.12.2013 made in I.A.No.10012 of 2013 in O.S.No.14673 of 2010 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioner : Mr.P.Amarnath

For Respondent : Mr.Manoj Sreevalsan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 16.12.2013 made in I.A.No.10012 of 2013 in O.S.No.14673 of 2010 on the file of the IV Assistant City Civil Court, Chennai.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.14673 of 2010 on the file of the IV Assistant City Civil Court, Chennai. The respondent filed the above suit for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit schedule property. The petitioner did not file written statement and contest the suit. On 25.11.2011, ~~exparte~~ ~~decree~~ was passed. The petitioner filed I.A.No.10012 of 2013 to condone the delay of 507 days in filing the application to set aside the ~~exparte~~ decree dated 25.11.2011.

3. According to the petitioner, the suit summons were not served on him and the respondent has deliberately given wrong address. The petitioner came to know about the ~~exparte~~ decree only when he received notice in W.P.No.7456 of 2013 filed by the respondent. The petitioner has filed the present application after

coming to know about the suit and exparte decree, therefore, the delay of 507 days is neither wilful nor wanton.

4. The respondent filed counter affidavit and submitted that the suit summons was served on the petitioner. The petitioner did not appear and contest the suit. The petitioner was aware of the suit, but he did not appear and contest the suit. The reason given by the petitioner for the delay of 507 days in filing the petition to set aside the exparte decree is that he came to know about the suit and exparte decree only when he received notice in the writ petition, which was filed by the respondent. The respondent was not given electricity connection on the objection made by the petitioner that as the electricity service connection should not be given as the suit is pending. The petitioner has not given valid reason for condonation of delay of 507 days and prayed for dismissal of the application.

5. Before the learned Judge, no oral evidence was let in by the petitioner and respondent. The petitioner marked two documents as Exs.P1 and P2/affidavit and copy of the order in W.P.No.7456 of 2013. The respondent marked Ex.R1/letter sent by the Assistant Engineer, Tamil Nadu Electricity Board, Chennai-118.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit, the documents filed and proof of service of summons on the wife of the petitioner, dismissed the application.

7. Against the said order of dismissal dated 16.12.2013 made in I.A.No.10012 of 2013, the present Civil Revision Petition is filed by the petitioner/defendant.

8. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

9. The petitioner has filed an application to condone the delay of 507 days in filing the petition to set aside the exparte decree on the ground that the suit summons was not served on the petitioner, as respondent has given wrong door number.

10. From the materials available on record and the order of the learned Judge, it is seen that the suit summons sent to the petitioner through Court was returned with an endorsement "Door locked and affixed". The summons sent through private RPAD was received by one P.Vasuki, wife of the petitioner and therefore, the

contention of the petitioner that the suit summons was not served on the petitioner is without merits. It is clear that the suit summons was served on the petitioner. The petitioner also objected for giving electricity connection to the respondent. The Electricity Board Authority mentioning the pendency of the suit addressed a letter to the respondent about the objection made by the petitioner. The submission of the petitioner is that the suit summons was not served on him and he came to know about the suit and ex parte decree only when he received notice in W.P.No.7456 of 2013, which shows that the petitioner has not approached the Court with clean hands.

11. For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.10.2017

Index : Yes/No
dm/kj

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V.M.VELUMANI, J.

dm/kj

To

The IV Assistant City Civil Judge,
Chennai.



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