

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.1909 of 2017 and
C.M.P.No.9229 of 2017

1. B.Kalangiam

2. S.Raja

..Petitioners

N.Kandasamy

Vs.

..Respondent

PRAYER:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 21.12.2016 made in E.A.No.5 of 2013 in E.P.No.16 of 2009 on the file of the Principal District Munsif, Coimbatore.

For petitioner : Mr.S.Vinoth Kumar

ORDER:

1. The respondent/landlord herein filed a petition in RCOP.No.209 of 2007 against the petitioners/tenant herein and 2 others to vacate the premises. The said RCOP was allowed. Pursuant to the same, the respondent filed an application in E.P.No.No.16 of 2009 to execute the order passed in the above RCOP. Subsequently, the petitioners herein were set ex parte on 18.12.2009.

Then, the petitioners filed an appeal in E.A.No.5 of 2013 on 21.01.2013 under Order XXI Rule 105 (3) and Section 151 of Code of Civil Procedure with an application to condone the delay of 1100 days in filing the accompanying application to set aside the ex parte order passed against the petitioners in the above E.P.No.16 of 2009. The Executing Court, without considering the case of the petitioner, has erroneously dismissed the condone delay application. Hence, the petitioners have filed this Civil Revision Petition.

2. On perusal of records, it is found that the petitioners have filed an EA No.5 of 2013 in EP.No.16 of 2009 before the Court below for the inordinate delay of 1100 days to set aside the ex parte order. It has been stated in the affidavit that the case records were misplaced and not able to trace out the records at the date of filing of the petition and further, the second petitioner was suffered from illness in the first week of December 2009 and taking treatment with various naturopathy and siddha vaidyas in Tamil Nadu and Karnataka. After that, the instant application was filed.

3. Heard, the learned counsel for the petitioners and perused the materials available on record.

4. On perusal of materials found in the typed set of papers, that the petitioners have not chosen to produce any oral and documentary evidence before the court below to establish sufficient causes for inordinate delay in filing the above said application to set aside the ex parte order. Therefore, in the light of the decision rendered by the Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in **(2015) 1 SCC 680**, wherein it is 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."

this court does not warrant any interference in the order passed in the instant application. Hence, there is no error or illegality in the order passed by the Court below.

5. In view of the above facts and circumstances of the case, the revision petition fails. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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D.KRISHNAKUMAR.J,

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To

The Principal District Munisif,
Coimbatore.



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