

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD). No.252 of 2017

and

C.M.P.No.1094 of 2017

Vedhanayagi ... Petitioner

..Vs..

P.Thenmozhi ... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 Constitution of India, against the fair and decreetal order passed in I.A.No.98 of 2016 in O.S.No.49 of 2011 on the file of the Subordinate Court, Sankari, Salem District, dated:03.10.2016.

For petitioner : Mr.M.Saravanakumar
For Respondent :Mr.R.Marudhachalamurthy

ORDER

Challenging the fair and decreetal order passed in I.A.No.98 of 2016 in O.S.No.49 of 2011 on the file of the Subordinate Court, Sankari, Salem District, dated:03.10.201, the present revision petition has been filed. O.S.No.49 of 2011 was filed for specific performance and permanent injunction and the same was decreed against the petitioner herein.

2. The petitioner herein filed the written statement by denying the pleadings in the plaint. Subsequently, the aforesaid suit was set exparte on 25.06.2012. After knowing that on 05.02.2015, the aforesaid exparte decree was passed, the petitioner has filed an application in I.A.No.98 of 2016, to condone the delay of 1084 days in filing the petition to set aside the exparte decree. The petitioner has given the detailed reasons for his non-appearance before the Court on 30.11.2011 and for the inordinate delay in filing the application. The Court below did not consider the bonafide reasons stated in the affidavit, even though, the respondent has not filed counter in the aforesaid Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the Court below has stated the reasons for rejecting the application that the petitioner has not chosen to adduce evidence to fortify her contentions made in the affidavit and not taking steps to be examine the counsel and further, delay of each and every day was not explained properly. Therefore, the said reasons stated by the Court below is contrary to the law laid down by this Court as well as the Hon'ble Supreme Court and therefore, the said order passed by the trial Court is liable to be set aside.

4. The learned counsel for the respondent would submit that the petitioner has not chosen to file the application within prescribed period for the reasons best known to him. But, however, on perusal of the affidavit filed by the petitioner and considering the inordinate delay in filing the application, there is no reason warranting to interfere with the orders passed by the Court below.

5. By taking into consideration the submissions made by the counsel for the parties, it is an admitted fact that the respondent herein filed the suit for Specific Performance and for Permanent Injunction against the petitioner herein. In the aforesaid suit, the petitioner herein was set exparte on 25.06.2012 and subsequently, the petitioner filed counter in E.P.91 of 2015 on 26.03.2016.

6. On a perusal of the affidavit filed in support of the petition filed by the petitioner would clearly shows that the petitioner has not furnished the details for the non-appearance before the Court below and also for the inordinate delay in filing the said application.

7. Even though, the said instant application was served to the respondent, the respondent has not chosen to file the counter affidavit and therefore, it is presumed that the respondent has not denied the said averments found in the

affidavit and therefore, this Court by considering the averments and to consider the case of the petitioner, that the aforesaid delay due to the sufficient cause has been shown in the affidavit. In fact, the petitioner has stated the detailed reasons and particulars have been filed by giving the reasons for non-appearance as far as the inordinate delay. But, in support of the averments, the petitioner has not adduced any documentary evidence. But, however, it was rejected on the ground that the petitioner did not adduce any oral and documentary evidence before the Court below.

8. In support of his contention, learned counsel for the petitioner relied upon the judgment of 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:

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.

9. In the light of the aforesaid Judgment of the Hon'ble Supreme Court and taking into consideration the facts and circumstances of the case, I am of the view that, an opportunity shall be granted to the petitioner. But, the Court below has rejected the contention of the petitioner that each and every day delay has not been explained in the affidavit. The said reasons are unacceptable and therefore, this Court is inclined to set aside the order passed by the Court below.

10. In the light of the above submissions and decisions of the Hon'ble Supreme Court, the present case is concerned an opportunity is given to the petitioner to adduce oral and documentary evidence before the Court below and satisfactory reasons stated in the affidavit filed before the Court below. Therefore, this Court is inclined to interfere with the order passed by the Court

below and the order passed in the afore said I.A.No.98 of 2016 is liable to be set aside and remanded back to the Sub-Court, Sankari and the Court shall provide an opportunity to the petitioner as well as to the respondent and pass orders in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order.

11. Since it is agreed by both the parties that the E.P proceedings shall be kept abeyance till the disposal of the aforesaid I.A.No.98 of 2016 in O.S.No.49 of 2011, pending before the Sub-Court, Sankari.

12. The Civil Revision Petition is allowed with the above direction.
No costs. consequently, connected Miscellaneous Petition is closed.

13.06.2017

Index:Yes/No

Internet:Yes/No

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Note: Issue order copy on

To

The Subordinate Court, Sankari,
Salem District.

D.KRISHNAKUMAR,J.,

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