

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.12.2017

CORAM

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

C.R.P.(N.P.D.) No.4033 of 2017

and

C.M.P.No.18866 of 2017

1 M.Soundararajan
2 Sumathi K.Prasath
3 Navamani

..Petitioners/Defendants

Vs.

R.Soundararajan

..Respondents /Plaintiff

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the final order dated 12.06.2017 in I.A.No.580 of 2016 in O.S.No.103 of 2010 on the file of Sub Court, Udumalpet.

For Petitioner : Mr.P.Saravana Sowmiyan
For Respondent : Mr. N.Thiagarajan

ORDER

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According to the petitioner, the respondent herein filed a suit in O.S.No.103 of 2010 before the District Court, Coimbatore against the petitioners for recovery of Rs.7 lakhs with interest at the

rate of 12%. The suit was posted on 10.2.2016 for cross examination of plaintiff's evidence. On that day, the petitioner could not contact his counsel and hence he was not appeared before the court. The trial court passed an ex parte decree on 29.4.2016. The petitioner has filed an application in I.A.No.580 of 2016 to condone the delay of 149 days in filing a petition to set aside the ex parte decree. The respondent opposed the application by filing counter statement. The trial court dismissed the application by stating that already ex parte decree has been passed twice and the same was set aside at the instance of the petitioner. Again, the petitioner has filed the instant application on the ground of illness. Further, the petitioner has filed application one after the other to drag on the proceedings in the suit. The court below accepted the said contention of the respondent and dismissed the application. Therefore, the revision petitioner has filed the present Civil revision petition before this court.

2 According to the learned counsel for the petitioner, earlier, similar application has been filed in the year 2012 in I.A.No.714 of 2012 and thereafter, suit was posted for trial. Due to bonafide reason, the petitioner could not appear before the court below. There is no wilful negligence nor wanton on the part of the petitioner only due to bonafide reason stated in the affidavit, the

petitioner could not appear before the court below. The trial court dismissed the suit on technical ground, not on merit. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent would submit that counter statement has been filed before the court below and strongly objected the application by stating that the conduct of the petitioner is condemnable as the petitioner is not co-operating the trial court for disposal of the suit. Earlier, when the petitioner has not appeared before the court below, an exparte decree has been passed. Subsequently, an application to condone the delay and the application to set aside the exparte decree were allowed. Despite all the above, when this case has been posted for trial on 10.2.2016, again the petitioner has failed to appear before the court below and therefore, exparte decree has been passed. Thus, the order passed by the court below does not warrant interference by this Court.

4 Heard the learned counsel for the petitioner, the learned counsel for the respondent and perused the materials on record.

5 In view of the above, there is some force in the contention of the learned counsel for the respondent on the conduct of

the revision petitioner before the trial court, as the revision petitioner on three occasions, filed similar applications for one reason or the other to condone the delay in filing the application to set aside the exparte decree, same were allowed and the case was reopened. In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. Further, the petitioners have given an undertaking before this Court by filing separate affidavit stating that they will regularly appear before the trial court to proceed with the completion of trial and give cooperation for disposal of the suit within the time fixed by this Court.

6 In the light of the decision of the Hon'ble Supreme Court and in view of the submission made by the counsel for the parties, recording the undertaking affidavit filed by the petitioners, the order passed by the court below is liable to be set aside, however, the petitioner has to pay cost to the respondent. Therefore, this Court inclined to pass the following order:

(i) The order passed passed by the court below in I.A.No.580 of 2016 in O.S.No.103 of 2010, dated 12.6.2017 is set aside on condition that the revision petitioner shall pay a sum of Rs.5000/- to the respondent within a period of one week from the date of receipt of copy of the order, if any default, the Civil revision petition stands dismissed.

(ii) In the event of compliance of the conditional order passed hereinabove, the court below shall number the application filed under Order IX Rule 13 C.P.C. if it is otherwise in order and pass appropriate orders.

(iii) In view of the undertaking affidavit filed by the revision petitioner, the court below is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order.

The civil revision petition stand allowed on the above terms. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

Note: Issue order copy on 15.12.2017

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D.KRISHNAKUMAR.J,

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Dated: 7.12.2017