

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.577 of 2017 &

C.M.P.No.2961 of 2017

1.Saroja
2.Narayanasamy
3.Govindasamy
4.Jayalakshmi
5.Logan
6.A.N.Sathiyandarayanan
7.V.Padmanabhan
8.K.Damodaran
9.M.R.saravanan

... Petitioners

v.

Bakthavachalu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 25.11.2016 passed in I.A.No.322 of 2015 in O.S.No.203 of 2011 on the file of Sub Court, Arakkonam.

For Petitioner : Mr.C.Chokkalingam

ORDER

Challenging the fair and final order passed in I.A.No.322 of 2015 in O.S.No.203 of 2011 on the file of Sub Court, Arakkonam, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.203 of 2011 for partition and for other reliefs.

3. Since the defendants failed to appear before the Trial Court on 31.10.2012, they were set ex-parte and an ex-parte preliminary decree was passed on 31.10.2012.

4. Thereafter, the defendants filed an application in I.A.No.322 of 2015 to condone the delay of 997 days in filing the application to set aside the ex-parte decree dated 31.10.2012.

5. In the affidavit filed in support of the application, the second defendant has stated that he was suffering from cardiac ailment and was taking treatment. The affidavit was filed by the second defendant on his behalf and also on behalf of other 8 defendants.

6. Admittedly, the other defendants also majors and therefore, the non-appearance of the other defendants on 31.10.2012 should have been explained by them in an acceptable manner.

7. In the case on hand, only the second defendant has stated that he was suffering from ailment and that alone cannot be taken into consideration for setting aside the ex-parte preliminary decree passed against all the defendants. Absolutely there is no reason given by the other defendants for their non-appearance on 31.10.2012.

8. It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for the delay, the delay should not be condoned. The ratio laid down by the Hon'ble Supreme Court of India in the judgment reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Lintied and another]** squarely applicable to the facts and circumstances of the present case. In the absence of sufficient cause shown by the defendants, the Trial Court has rightly dismissed the application.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2017

Index : Yes/No
I

Rj

To

The Sub Court
Arakkonam.

M. DURAISWAMY,J.,

Rj

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