

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

Review Application No.111 of 2017
and C.M.P.No.13227 of 2017
against C.R.P.(NPD).No.2944 of 2016

1.G.John
2.Ruthmary
3.David Raj
4.Mary Mallika

... Applicants

Vs.

Srinivasan

... Respondent

Review Application filed under Order 47 Rule 1 and Section 114 of the Code of Civil Procedure against the order made in C.R.P.(NPD).No.2944 of 2016 dated 22.09.2016.

For Applicants : Mr.T.M.Hariharan
for M/s.M.Vijayakumar

For Respondent : Mr.E.Girirajan

ORDER

The petitioners, who are the defendants in O.S.No.162 of 2008 on the file of the Subordinate Court, Kancheepuram, have filed the above Review Application to review the order dated 22.09.2016 passed in C.R.P.(NPD).No.2944 of 2016.

2.The Civil Revision Petition was filed challenging the fair and final order passed in I.A.No.136 of 2015 in I.A.No.436 of 2012 in O.S.No.162 of 2008.

3.The respondent/plaintiff filed the suit in O.S.No.162 of 2008 for declaration and for recovery of possession.

4.Since the defendants failed to appear before the trial Court, they were set exparte and an exparte decree was passed on 02.04.2009. Thereafter, the defendants filed an application in I.A.No.436 of 2012 to condone the delay of 1142 days in filing the petition to set aside the exparte decree. The petition filed by the defendants to condone the delay of 1142 days was adjourned from time to time for the reason that the defendants have not paid batta. Since the defendants failed to pay batta in I.A.No.436 of 2012, the trial Court dismissed the application for default. Thereafter, the defendants filed another application in I.A.No.136 of 2015 to condone the delay of 286 days in restoring the application in I.A.No.436 of 2012. After contest, the trial Court dismissed the application. As against this order, the defendants have filed the above Revision.

5. In the affidavit filed in support of the petition in I.A.No.136 of 2015, the 1st petitioner has stated that he was suffering from viral fever for 40 days and therefore, he could not appear before the trial Court on 12.11.2013, hence, the petition was dismissed for default. Except stating that he was suffering from viral fever, he has not produced any evidence establishing the said averment. That apart, though the delay was 286 days, he has stated that he was suffering from viral fever for 40 days and therefore, for the remaining 246 days, the 1st defendant has not given any reason.

6. Since the defendants have not given sufficient cause for the delay of 286 days, the trial Court has dismissed the petition. This Court also relying upon the judgment reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]**, found that the defendants have not explained the reasons for the delay in a proper manner and confirmed the order passed by the trial Court and dismissed the Revision.

7. Mr.T.M.Hariharan, learned counsel appearing for the review applicants submitted that even prior to the filing of I.A.No.436 of 2017 to

condone the delay of 1142 days in filing the petition to set aside the exparte decree, the defendants have filed another application in I.A.(SR).No.3942 of 2009 as early as on 30.06.2009 to condone the delay of 40 days in filing the petition to set aside the exparte decree. Further, the learned counsel submitted that the said application was not numbered and the same was not prosecuted by the defendants before the trial Court. Further, the learned counsel submitted that without having knowledge about the filing of the said application, the defendants have filed the subsequent application in I.A.No.436 of 2012 to condone the delay of 1142 days. In these circumstances, the learned counsel submitted that since this fact was not brought to the notice of this Court at the time of the disposal of the Civil Revision Petition, the same may be considered and the order passed in the Civil Revision Petition may be reviewed.

8. Even assuming that the defendants have filed the application in I.A.(SR).No.3942 of 2009 as early as on 30.06.2009, the order passed in I.A.No.436 of 2012 to condone the delay of 1142 days in filing the petition to set aside the exparte decree is not the subject matter of the present Civil Revision Petition. The present Civil Revision Petition has been filed by the defendants challenging the order passed in I.A.No.136 of 2015, which was filed by the defendants to condone the delay of 286 days in restoring

the application in I.A.No.436 of 2012, which was dismissed for default on 12.11.2013. Therefore, when the order passed in I.A.No.436 of 2012 is not the subject matter of the Civil Revision Petition, the submission made by the learned counsel for the review applicants cannot be accepted with regard to the filing of the earlier application on 30.06.2009.

9. That apart, the defendants themselves have not prosecuted the said application for the reasons best known to them. In spite of filing the earlier application on 30.06.2009, the defendants have filed the 2nd application in I.A.No.436 of 2012 without mentioning anything in their affidavit about the earlier application. Since the new contention raised by the learned counsel for the applicants with regard to the filing of the earlier application is nothing to do with the present order passed in the application in I.A.No.136 of 2015, the said contention cannot be accepted. The defendants have not explained the reasons for the delay of 286 days in filing the application to restore the application in I.A.No.436 of 2012 in an acceptable manner.

10. Taking note of all these aspects, this Court had dismissed the Civil Revision Petition and confirmed the order passed by the trial Court. In these circumstances, I do not find any error apparent on the face of the record,

warranting interference in the Review Application. The Review Application is devoid of merits and is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Internet : Yes
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Speaking Order

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M.DURAIWAMY,J.
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