

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2017

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION No.980 of 2017

and

C.M.P.No.4852 of 2017

Saravanan ... Petitioner/1st Defendant

vs

Sivagamasundari ... Respondent/Plaintiff

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 15.02.2017 in I.A.No.388 of 2016 in O.S.No.5 of 2007 on the file of the District Munsif cum Judicial Magistrate, Vanur, Villupuram District.

For Petitioner ... Mr.R.Rajarajan

For Respondent ... No Appearance

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decretal order passed in I.A.No.388 of 2016 in O.S.No.5 of 2007, dated 15.02.2017 on the file of the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram District.

2.The brief facts of the case are as follows:

The respondent filed a suit in O.S.No.5 of 2007 for permanent injunction before the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram District against the petitioner. In the said suit, an exparte order was passed on 02.03.2007. Hence, the petitioner filed an application in I.A.No.388 of 2016 to condone the delay of 3652 days in filing an application to set aside the exparte order passed in the aforesaid suit. The said interlocutory application was dismissed on 15.02.2017 for the reason that the petitioner has not produced any materials to show that the petitioner was suffering from illness. Aggrieved by the same, the petitioner has come forward with the present civil revision petition.

3.The learned counsel for the petitioner submitted that the learned judge committed an error in dismissing the application filed under Section 5 of the Limitation Act to condone the delay in filing an application to set aside the

ex-parte order and the same is erroneous and contrary to law. Further, he has submitted that the learned Judge ought to have allowed the application, but, instead of doing the same, without giving any opportunity to the petitioner to contest the suit, dismissed the application. Hence, the order passed by the learned trial judge is liable to be dismissed and the civil revision petition has to be allowed.

4.I have heard the learned counsel for the petitioner and also perused the materials available on record.

5.On a perusal of the affidavit filed in support of the application in I.A.No.388 of 2016, it is seen that the suit was filed by the respondent/plaintiff for permanent injunction against the petitioner and his brother. In the said affidavit, it is admitted by the petitioner that the suit summons was not personally served on him, but, he was informed that he is one of parties to the suit and it is also admitted that the parties to the suit are close relatives. However the petitioner was under the bona-fide impression that the suit summons would be personally served on him.

6.It is further seen in the affidavit that the petitioner was suffering from jaundice for several years continuously and hence, he was not in a position to pursue the suit by filing written statement before the Court below. For the said reason, to show his bona-fide, the petitioner has not furnished any particulars and he has not adduced any oral and documentary evidence before the Court below to substantiate his claim for condoning the inordinate delay of 3652 days in filing the application to set aside the ex-parte order. Hence, this Court is of the considered view that the Court below has rightly rejected the claim of the petitioner and dismissed I.A.No.388 of 2016.

7.At this juncture, it is useful to refer the decision 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:

" 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."

8. In the light of the decision of the Hon'ble Supreme Court and since the petitioner has not furnished the particulars for the inordinate delay, this Court is not inclined to interfere with the impugned order passed by the Court below and inclined to pass the following orders:

"a) The order passed in I.A.No.388 of 2016 in O.S.No.5 of 2007 on the file of the learned Additional District Munsif- cum- Judicial Magistrate, Vanur, Villupuram is hereby confirmed.

b) The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

9. It is needless to state that it is open to the petitioner to participate in the suit proceedings if it is permitted under law.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

The District Munsif cum
Judicial Magistrate,
Vanur,
Villupuram District.

+1 cc to Mr.G.Rajan,advocate,sr.16835.

rsy(co)
krd 25/4

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