

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4039 of 2011
& M.P.No.1 of 2011

K.Duraisamy

.. Petitioner

Vs.

A.K.Palanisamy

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 against the fair and decreetal order dated 31.01.2011 made in C.M.A.No.37 of 2009 on the file of the Principal District Judge Coimbatore reversing the fair and decreetal order dated 04.02.2011 made in I.A.No.78 of 2008 in O.S.No.292 of 2004 on the file of the Subordinate Court, Tiruppur.

For Petitioner : Mr.S.N.Sivakumar

For Respondent : Mr.Ma.P.Thangavel

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ORDER

This Civil revision petition has been filed against the fair and decreetal order dated 31.01.2011 made in C.M.A.No.37 of 2009 on

the file of the Principal District Judge, Coimbatore, reversing the fair and decreetal order dated 04.02.2011 made in I.A.No.78 of 2008 in O.S.No.292 of 2004 on the file of the Subordinate Court, Tiruppur.

2. The learned counsel appearing for the petitioner submitted that the respondent has filed a suit for recovery of money against the petitioner. An exparte decree was passed on 12.10.2006. Against which, the petitioner filed an Interlocutory Application in I.A.No.78 of 2008 to condone the delay of 442 days in filing the petition to set aside the exparte decree, along with an application to set aside exparte decree. The said application, by order dated 04.02.2009 was allowed, on payment of cost of Rs.500/-. Against which, the respondent filed CMA.No.37 of 2009 before the learned Principal District Judge, Coimbatore, who by judgment dated 31.01.2011 allowed the Civil Miscellaneous Appeal on the ground that the learned Trial Judge has not given any valid reason for condoning the delay in filing the petition to set aside the exparte decree.

3. Aggrieved against the said judgment dated 31.01.2011 made in C.M.A.No.37 of 2009, the present civil revision petition has been filed by the petitioner.

4. The respondent/plaintiff entered appearance through counsel. Though the learned counsel appearing for the respondent submitted that the sole respondent died on 12.06.2015, he has not furnished the particulars of the legal heirs.

5. The learned counsel appearing for the petitioner sought time for filing a petition to implead the legal heirs of the deceased respondent. Hence, this Court directed the matter to be posted after three weeks. Subsequently, when the matter was called on 04.07.2017, the learned counsel appearing for the respondent submitted that he is not aware of the legal heirs of the respondent and reported no instructions. The petitioner also has not taken any steps to get instructions regarding the legal heirs of the deceased respondent.

6. Heard the learned counsel for both parties and perused the materials on record.

7. The sole respondent died. The learned counsel for the respondent could not furnish the details of the legal heirs of the deceased respondent.

The petitioner is also unable to find out the legal heirs.

8. In these circumstances, the civil revision petition is disposed with liberty to the petitioner to file an application to set aside ex parte decree without any application for condonation of delay if the legal heirs of the respondent/plaintiff file Execution Petition against the petitioner to execute the ex parte decree obtained by the deceased respondent. In such an event, the learned Judge is directed to consider the application filed by the petitioner to set aside the ex parte decree on merits without insisting for an application for condonation of delay and without applying the principle of res judicata and pass orders in accordance with law.

9. With the above direction, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2017

gsa
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

1. The Subordinate Judge, Tiruppur.

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2. The Principal District Judge, Coimbatore.

V.M.VELUMANI,J.

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