

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).Nos.298 and 299 of 2015
& M.P.Nos.1 and 1 of 2015

1.R.Vijayalakshmi
2.M.R.Chendilnathan
3.S.Subadra

.. Petitioners in
both CRPs.

Vs.

M/S.Univercell Telecommunications
(India) Pvt. Ltd.,
No.281, TTK road, Alwarpet
Chennai-600 018.

.. Respondent
in both CRPs.

Prayer:- Civil Revision Petitions are filed under Section 115 of CPC.,
against the fair and decretal order dated 17.11.2014 made in
C.M.P.Nos.771 and 772 of 2012 in A.S.Nos.301 and 302 of 2010 on
the file of the VI Additional City Civil Court, Chennai.

For Petitioners : Mr.S.Jaganathan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 17.11.2014 made in C.M.P.Nos.771 and 772 of 2012 in A.S.Nos.301 and 302 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

3.The petitioners as the plaintiffs filed a suit in O.S.No.4561 of 2007 for recovery of money due on letter of interest. The respondent/defendant has filed a written statement and contested the suit. Counter claim was ordered and the suit was dismissed on 19.12.2008, against which, the petitioners have preferred A.S.Nos.301 and 302 of 2010. They have also filed the petition in C.M.P.No.1973 of 2011 under Order 41 Rule 27 of CPC, to receive additional documents and the same was dismissed by the trial Court on 23.02.2012. Aggrieved over the same, the petitioners were making arrangements to file a revision before this Court and that the counsel appearing for the petitioners sought for adjournment

and the appeals stood adjourned for several hearings. On 18.07.2012, the matter stood adjourned to 26.07.2012. On 26.07.2012, it was held that the representing counsel for the petitioners sought for time, which was denied, as the appeals were pending for arguments of the petitioners/appellants' side for a long time. Hence, the case was passed over. When the case was taken up at 5.00 p.m., there was no representation for the appellants and hence, the appeals were dismissed for default. Aggrieved over the same, the petitioners filed C.M.P.Nos.771 and 772 of 2012 under Order IX Rule 13 of CPC to set aside the exparte decree dated 26.07.2012 and to restore the appeals into file. The said petitions were dismissed, against which, the present revisions have been preferred by the petitioners.

4.Learned counsel for the petitioners would submit that affidavit has been filed by the counsel on record to show that they were omitted to mention the date of hearing on his diary. Hence, they were unable to appear before the Court on 18.07.2012 and that the appeals stood adjourned to 26.07.2012, on which date, the representing counsel represented on behalf of the petitioners and sought for time, but it was denied and the matter was passed over.

When the matter was called at 5.00 p.m., the petitioners were called absent and they were set exparte. Therefore, he prays for allowing the revisions.

5. On perusal of the typed set of papers, it reveals that the petitioners as the plaintiffs filed the suit for recovery of money due to the tune of Rs.1,50,000/- by way of letter of interest. The respondent/defendant filed a counter claim. That suit was dismissed and counter claim has been ordered vide order dated 19.12.2008, against which, the petitioners preferred A.S.Nos.301 and 302 of 2010. During pendency, the petitioners filed a petition in C.M.P.No.1973 of 2011 under Order 41 Rule 27 for reception of additional evidence, which was dismissed on 23.02.2012. Thereafter, the petitioners took steps to prefer the civil revision petition against the said order. So the appeals stood adjourned periodically. But no one appeared on behalf of the petitioners. On 18.07.2012, there was no representation on behalf of the petitioners and hence, it was adjourned to 26.07.2012. On 26.07.2012, the appeals were dismissed for default.

6.It is pertinent to note that after dismissal of C.M.P.No.1973 of 2011 on 23.02.2012, the appeals were periodically adjourned nearly eight times.

7.It is the case of the petitioner that on 05.06.2012, they were appeared and sought for adjournment and that the matter was adjourned. But the junior counsel filed an affidavit stating that he has omitted to make an entry of the hearing date in his diary on 05.06.2012, as a result of which, he could not appear before the Court. But that aspect was not considered by the trial Court.

8.A perusal of the fair and decreetal order dated 17.11.2014 shows that after 05.06.2012, the appeals were periodically adjourned from 03.06.2012, 21.06.2012, 05.07.2012 and 18.07.2012. On 26.07.2012 only, the appeals were dismissed for default.

9.Furthermore, on 26.07.2012, neither the counsel on record nor his junior counsel appeared before the Court. But a counsel has represented on behalf of the petitioners and sought for time, which was denied. Hence, the matter was passed over. When the matter

was called at 5.00 p.m., as there was no representation on behalf of the petitioners, the appeals were dismissed for default.

10.It is pertinent to note that C.M.P.Nos.771 and 772 of 2012 have been filed with a delay of 564 days that too after filing E.P.No.31 of 2014. Even though the petitions for restoration have been filed within thirty days, they were returned for rectifying some defects. The petitioners kept quite all along and after receiving notice in execution petition, they have come forward with the present petitions, which shows the malafide intention of the petitioners to drag on the proceedings and to prevent the respondent from enjoying the fruits of the decree. That factum was rightly considered by the trial Court. Furthermore, affidavit for restoration petitions have been filed only by the junior counsel. He is not a competent person to file an affidavit on behalf of the petitioners and he can file only the supportive affidavit, if any latches committed by the counsel. Therefore, the fair and decreetal order passed by the trial Court does not suffer any infirmity or illegality and they are hereby confirmed. Consequently, the civil revision petitions are dismissed.

11.In the result, the Civil Revision Petitions stand dismissed by confirming the fair and decreetal order passed in C.M.P.Nos.771 and 772 of 2012. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.01.2017

kj

To

VI Additional City Civil Court, Chennai.

R.MALA,J.

Kj

C.R.P(NPD).Nos.298 and 299 of 2015
& M.P.Nos.1 and 1 of 2015

09.01.2017