

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1733 of 2008
& M.P.No.1 of 2008

M.Venugopal

.. Petitioner

Vs.

G.Manohar

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order and decretal order dated 12.02.2008 made in I.A.No.13166 of 2007 in O.S.No.7187 of 1993 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Sairam Kausik Murali

For Respondent : Mr.H.Kishore

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 12.02.2008 made in I.A.No.13166 of 2007 in O.S.No.7187 of 1993 on the file of the learned XI Assistant Judge,

City Civil Court, Chennai.

2. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.7187 of 1993, on the file of learned XI Assistant City Civil Court, Chennai. The respondent filed said suit for recovery of money under Order 37 Rule 1 C.P.C. against the petitioner. The petitioner filed I.A.No.11452 of 1995 for leave to defend the suit. The said application was dismissed on 17.09.1996. Against that order of dismissal made in I.A.No.11452 of 1995, the petitioner filed C.R.P.No.2584 of 1998. This Court by the order dated 23.07.2004, allowed the Civil Revision Petition, granting unconditional leave to the petitioner to defend the suit and granted a period of two months time from the date of order, to file written statement and directed the learned Judge to dispose of the suit, within a period of six months, after affording an opportunity to both the petitioner and respondent.

3. The petitioner did not file any written statement. He was set ex-parte on 06.10.2004 and posted the suit for recording evidence on 11.10.2004. The petitioner filed I.A.No.17274 of 2004, to set aside the ex-parte order. After arguments of both sides,

orders were reserved. The petitioner filed application in I.A.No.18818 of 2004 for re-opening the said application. Both the applications were dismissed on 20.12.2004. The suit was decreed ex-parte on the same day. The petitioner filed C.R.P.No.443 of 2006 against the order passed in I.A.No. 17274 of 2004 to set aside the ex-parte order, in view of the fact that the ex-parte decree was passed on 20.12.2004. This Court dismissed the C.R.P.No.443 of 2006 on the ground that petitioner has not challenged the ex-parte decree. The petitioner filed I.A.No.13166 of 2007 to condone the delay of 897 days in filing the petition to set aside the ex-parte decree. According to the petitioner, after order dated 23.07.2004, allowing C.R.P.No.2584 of 1998 by granting leave to the petitioner and after receipt of records from the Court, the learned Judge did not issue any notice to the petitioner or his counsel and therefore he could not file written statement.

4. The respondent filed counter affidavit and denied all the averments made in the affidavit and submitted that the intention of the petitioner is only to drag on and delay the proceedings and even along with the petition to condone the delay in filing the petition to set aside the ex-parte decree, the petitioner has not filed any

written statement.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the order of dismissal dated 12.02.2008, made in I.A.No.13166 of 2007 in O.S.No.7187 of 1993, the present civil revision petition has been filed by the petitioner.

7. Heard learned counsel appearing for both sides and perused the materials available on record.

8. The contention of the learned counsel for the petitioner that the learned Judge did not issue any notice to the petitioner or his counsel, after C.R.P.No.2584 of 1998 is allowed by this Court and after receiving records and due to that the petitioner could not file written statement is without any merits. This Court, while allowing the C.R.P.No.2584 of 1998, issued a specific direction to the petitioner to file written statement within a period of two months from the date of order and directed the learned Judge to dispose the suit, within a period of six months thereafter, after affording

opportunity to both the parties.

9. In view of the said direction, the petitioner ought to have been vigilant enough and ought to have followed the case in the Trial Court. On three dates, the suit was posted for appearance of the petitioner and only when he did not appear, he was set ex-parte. In addition to that, even the petitioner has not filed written statement along with the petition to condone the delay in filing the petition to set aside the ex-parte order. It is a well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties were given acceptable and valid reason and the intention of the party is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

10. Considering all the above facts, especially the order of this Court dated 23.07.2004, passed in C.R.P.No.2584 of 1998 in entirety, it is clear that the intention of the petitioner in the present case is only to drag on the proceedings and he has not given any

V.M.VELUMANI, J.

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valid reason to condone the delay in filing the petition to set aside the ex-parte decree. There is no irregularity or illegality, warranting interference with the order of the learned trial Judge, dated 12.02.2008.

11. For the above reason, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2017

Index : Yes
dm/gsa

To

The XI Assistant Judge,
City Civil Court, Chennai.

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