

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.238 of 2010

and

M.P.No.1 of 2010

Krishnan

.. Petitioner

Vs.

Shanmugam

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal Order in I.A.No.1382 of 2008 in O.S.No.729 of 2005, dated 02.11.2009, on the file of the Principal District Munsif, Kallakurichi.

For Petitioner : Mr.R.Singaravelan, Senior counsel
for M/s.M.Srividhya

For Respondent : Mr.K.S.Sundar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and Decretal order passed in I.A.No.1382 of 2008 in O.S.No.729 of 2005, dated 02.11.2009, on the file of the Principal District Munsif, Kallakurichi by allowing this Civil Revision Petition.

2.The case of the revision petitioner is that the respondents herein filed a suit against the petitioner herein in O.S.No.729 of 2005 on the file of the Principal District Munsif, Kallakurichi for permanent injunction. In the said suit the revision petitioner remained ex-parte and hence, an ex-parte decree was passed against him.

3.The petitioner herein filed I.A.No.1382 of 2008 to condone delay of 672 days in seeking to set aside the ex-parte decree passed against him. The respondent herein/ plaintiff filed counter affidavit stating that the revision petitioner has simply stated that he is residing at Sirkmangalore in Karnataka State for the past 20 years and he failed to state that what is the nature of work he is doing and under whom he is working. The respondent herein further contented that the revision petitioner/defendant is all along residing in the native village only and he never worked at Sirkmangalore. Hence, he prayed for dismissal of the condone delay application.

4.The learned Principal District Munsif after enquiry was pleased to dismiss the condone delay application filed by the revision petition by order and decree dated 02.11.2009. Aggrieved over the same, the present revision petition is filed.

5.I heard Mr.R.Singaravelan, learned senior counsel appearing for the petitioner and Mr.K.S.Sundar, learned counsel appearing for the respondent and perused the records.

6.The revision petitioner is a defendant in the suit for permanent injunction filed by the respondent herein/plaintiff in O.S.No.729 of 2005. An ex-parte decree was passed in favour of the plaintiff on 02.11.2009. The revision petitioner has filed I.A.No.1382 of 2008 seeking condone the delay of 672 days in filing set aside ex-parte decree application. In the condone delay application the revision petitioner has assigned the reason that he is residing at Sikkamangalore in Karnataka State and doing Cooli work for his avocation. The revision petitioner used to come to his village for some time. The respondent herein/ plaintiff knowing full well about the same, by mentioning wrong address filed the suit against the revision petitioner and by effecting paper publication, obtained an order of ex-parte decree against the revision petitioner.

7.The revision petitioner come to know about the ex-parte decree passed against him when he returned to his village and at that time a dispute arosed with regard to the suit property. Thereafter the

revision petitioner filed application to condone the delay of 672 days in seeking to set aside the ex-parte decree. On the side of revision petitioner he was examined as PW1 and on his side one Ayyankutti was examined as PW2. Apart from that on the side of the revision petitioner Ex.P1 to P8 were marked. On the side of the respondent herein no oral and documentary evidence was adduced. However, the learned trial Judge dismissed the Section 5 application filed by the revision petitioner by holding that the revision petitioner is having family card at Melur i.e., in his native place and regularly getting commodities. Further, the trial court held that the revision petitioner has not produced any document to show that he is doing business at Sikkamangalore for the past 20 years.

8.This Court has carefully considered the rival submission on either side. The revision petitioner in order to substantiate his case has adduced evidence as PW1 and apart from that he also examined PW2 on his side. That apart in order to establish the fact that he is doing Cooli work at Karnataka State he filed documents Ex.P1 to P8. From the above said documents, this Court could able to see that the revision petitioner is residing at Karnataka State and under Ex.P5 identity card which is in Kanadam shows that the petitioner herein is working at Karnataka State. From the above documents this court has

come to the conclusion that the revision petitioner is doing Cooli work at Sirkmangalore in Karnataka State. But the trial court has not at all considered the above said documents while deciding the condone delay application filed by the revision petitioner. On the other hand, the trial court has erroneously held that the revision petitioner is having family card at Melur. Naturally, everyone will have family card only at his native village. It is not the case of the revision petitioner that he is permanently residing at Sirkmangalur. Hence the impugned order passed by the trial court is liable to be set aside. Accordingly, the order and decree passed in I.A.No.1382 of 2008 in O.S.No.729 of 2005 dated 02.11.2009 is hereby set aside.

9.From the foregoing discussion, this court is of the considered view that to render substantial Justice and also to meet the ends of Justice the revision petition is liable to be allowed and therefore the delay of 672 days is condoned, however with cost of Rs.10,000/- to be paid to the respondent herein for the inconvenience and delay caused to him by the revision petitioner.

10.In the result:

a) the civil revision petition is allowed by setting aside the

order in I.A.No.1382 of 2008 in O.S.No.729 of 2005, dated 02.11.2009, on the file of the Principal District Munsif, Kallakurichi, on condition that the petitioner should pay a sum of Rs.10,000/- to the respondent as cost, within a period of three weeks from the date of receipt of a copy of this order;

b) on production of the payment receipt, the learned Principal District Munsif, Kallakurichi, is hereby directed to number the set aside application and to pass order within a period of one month by giving notice to both parties;

c) pursuant to the order passed in the set aside petition, the trial court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the suit within a period of two months thereafter. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

27.02.2017

Internet:Yes
Index:Yes

vs

To

The Principal District Munsif,
Kallakurichi.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.238 of 2010
and
M.P.No.1 of 2010**

27.02.2017