

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No. 2464 of 2016
and
CM.P No.12824 of 2016

Kumar

... Petitioner

VS.

Selvam

...Respondent

This Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order passed in I.A. No.78/2016 in O.S No.39/2015 on the file of learned Subordinate Judge, Uthangarai dated 27.04.2016 and for further orders.

For Petitioner : Mr. K. Thiruvengadam

For Respondent : Mr. P. Mani

ORDER

This Civil Revision Petition arises against the order passed in I.A. No.78/2016 in O.S No.39/2015 on the file of learned Subordinate Judge, Uthangarai dated 27.04.2016.

2. Learned counsel for the petitioner submitted that the respondent filed O.S. No. 39/2015 before the learned Subordinate Judge, Uthangarai, Krishnagiri District, seeking for specific performance and for permanent injunction with untenable allegations, against the petitioner. The same was set exparte on 09.06.2015, for non-filing of written statement. Against the same, the petitioner filed an application in I.A. No. 78/2016 to condone the delay of 115 days in filing the application, to set aside the exparte decree. Though the said I.A. was allowed on condition to pay a cost of Rs.500/-, due to non-compliance by the petitioner, the same was dismissed on 27.04.2016. Learned counsel for the petitioner further submitted that due to the reasons stated in the affidavit, the petitioner was not in a position to pay the conditional amount, but the same was not considered by the Court below. Aggrieved by the said order, the petitioner has filed the present revision before this Court.

3. Learned counsel for the respondent would submit that the petitioner has not paid the cost imposed, thereby has not complied with the conditional order and hence the court below has rightly dismissed the Interlocutory Application No.78/2016 on 27.04.2016.

4. Heard both sides and perused the material available on record.

5. The petitioner has filed the I.A. No.78 of 2016 in O.S. No. 39/2015, under Section 5 of the Limitation Act, to condone the delay of 115 days, in filing the Application to set aside the ex-parte decree passed on 09.06.2015. The said application has been allowed on payment of cost of Rs.500/-. Due to the reasons stated in the affidavit filed in support of the petition, the petitioner was not able to deposit the said cost amount.

Section 148 of Civil Procedure Code, reads as follows :

"148.Enlargement of time.-

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in ' its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

6. In view of the above said provision, the petitioner should have approached the court below, by filing an application for extension of time. Without exhausting the said provision, the petitioner has filed the present Revision.

7. Under such circumstances, at this stage, I am not inclined to entertain the Revision Petition. However, liberty is granted to the petitioner to file an application under Section 148 CPC, before the Court below, if so advised, within a period of 12 weeks from the date of receipt of a copy of this order. Till then, the respondent shall not take any coercive steps, to execute the decree.

8. The Civil Revision Petition is dismissed, with the above direction. Consequently, the Connected Miscellaneous Petition is closed. No order as to costs.

06.04.2017

Index : yes / no

Speaking Order/ Non speaking order

avr

To

The Subordinate Judge,
Uthangarai

D.KRISHNAKUMAR, J.

avr

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