

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4456 of 2010

Rengasamy

...

Petitioner

Vs

Solaimuthu

...

Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order dated 22.12.2008 passed by the District Judge, Perambalur in I.A.No.263 of 2008 in O.S.No.378 of 2004.

For Petitioner : Mr.S.Mothilal

For Respondent : Mr.T.Sreenivasan

ORDER

The revision petitioner is the 1st defendant in the suit in O.S.No.378 of 2004 on the file of the learned District Munsif Court, Perambalur filed by the respondent / plaintiff.

2.The revision petitioner has come up with this Civil Revision Petition as against an order of dismissal of his application in I.A.No.263 of 2008 dated 22.12.2008 filed under Section 5 of Limitation Act.

3.It is found that the revision petitioner was set Ex-parte and an Ex-parte decree was passed against him on 17.09.2004. In the said factual backdrop, alleging medical ailments and that he was then out stationed, the petitioner filed an Interlocutory application in I.A.No.263 of 2008 with delay of 760 days.

4.According to the revision petitioner, he was suffered from serious Jaundice and therefore he has taken country treatment and was bed ridden for 6 months. Subsequently he went to Nilgiris for his livelihood and because of the said reason he was unable to contact his Advocate and in the mean time the Ex-parte decree came to be passed against him.

5.The respondent herein contested the petitioner's application contending that the reason assigned by the revision petitioner to condone delay of 760 days is not genuine and same cannot be accepted.

6.It is also his contention that the revision petitioner has filed the above application to set aside the Ex-parte decree only on receipt of notice in the Executive Petition in E.P.No.37 of 2006 filed by the respondent herein, accordingly he prays for dismissal of this Revision.

7.On perusal of impugned order it discloses that the Trial Court has dismissed the petitioner's application of Section 5 Limitation Act solely on the ground that the revision petitioner though appeared through his counsel in E.P.No.37 of 2006 on 19.04.2006, but has not chosen to file the application to set aside the Ex-parte decree immediately after 19.04.2006, but has filed belatedly on 16.11.2006.

8.I heard Mr.S.Mothilal, learned counsel for the petitioner and Mr.T.Sreenivasan, learned counsel for the respondent and perused the entire materials available on record.

9.It is needless to say that to condone the delay, everyone must assign proper, valid, sufficient, cogent and acceptable reason and in the absence of the same delay cannot condoned mechanically, however at the same time the technicalities should not stand in the

way to render sustainable Justice to the parties that normally in considering Section 5 application the Court should be liberal and lenient. The parties to the proceedings should always get a Decree on merits by contesting the suit. However, while condoning delay the Court should also consider the inconvenience caused to other side because of the delay and the same has to be compensated in terms of reasonable cost.

10. In view of the discussion made above, this Court is inclined to condone delay of 760 days in setting aside Ex-parte decree on payment of cost of Rs.25,000/- to be paid by the revision petitioner to respondent herein.

11. In the result:

a) this civil revision petition is allowed by setting aside the order passed in I.A.No.263 of 2008 in O.S.No.378 of 2004, dated 22.12.2008, on the file of the learned District Munsif Court, Perambalur, on condition that the petitioner should pay a sum of Rs.25,000/- as cost, to the respondent within a period of three weeks from the date of receipt of a copy of this order;

b) on production of the copy of the payment receipt within the

stipulated time, the trial Court namely, learned District Munsif Court, Perambalur is hereby directed to number the set aside application and to pass orders within a period of one month thereafter;

c) on passing the orders in the set aside application, the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and dispose of the same 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.

06.03.2017

vs

Note: Issue order copy on 24.01.2019

Index : Yes

Internet : Yes

To

The District Munsif Court, Perambalur.

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
CRP(NPD)No.4456 of 2010

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