

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP(NPD)No.3870 of 2012

N.H.Haja Maideen

.. Petitioner

Vs

1.M.Barakkath Nisha
2.Anees Fathima
3.Asik Mohammed

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the Judgment and Decree passed in CMA.No.8 of 2010 on the file of the Sub Court, Mannargudi dated 16.06.2011 confirming the Fair and Final Order passed in I.A.No.542 of 2009 in O.S.No.38 of 2008 on the file of the District Munsif Court, Mannargudi, dated 16.12.2009.

For Petitioner : Ms.P.T.Rama Devi

For Respondents : Mr.Thiruvenkatasamy

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ORDER

The revision petitioner is the defendant in O.S.No.38 of 2008 on the file of the learned District Munsif Court, Mannargudi. The respondents are the plaintiffs in the said suit. The plaintiffs filed the

said suit for declaration and recovery of possession. In the said suit, the revision petitioner was set Ex-parte and an Ex-parte decree was passed against him on 30.03.2009.

2.It is seen from records that the revision petitioner filed I.A.No.332 of 2009 to condone delay in filing the application to set aside the Ex-parte decree and same has been allowed. Thereafter, the revision petitioner filed an application in I.A.No.542 of 2009 to set aside Ex-parte decree and the same came to be dismissed by the Trial Court on 08.12.2009. Challenging the same the revision petitioner filed C.M.A.No.8 of 2010 before the learned Sub Court, Mannargudi and the same was also dismissed, by order dated 16.06.2011. Aggrieved over the same the present Civil Revision Petition is filed.

3.The trial Court has dismissed the application seeking to set aside the Ex-parte decree, holding that the reason assigned by the revision petitioner is not bonafide and the petitioner has also not produced documents to support his case that he was affected by Jaundice. The Lower Appellate Court confirmed the order of the trial Court.

4.The learned counsel appearing for the petitioner submitted that even though delay in filing the set aside application was condoned by the trial Court which was filed in I.A.No.132 of 2009, the Courts below ought not to have dismissed the present application filed to get the Ex-parte decree to set aside, since the revision petitioner has given the same reason of ill health in both the applications. Therefore the learned counsel contented that the lower Courts ought to have accepted the reason given in I.A.No.542 of 2009 to set aside the Ex-parte decree and should have allowed the same.

5.Per contra, the learned counsel appearing for respondents submitted that the defendant/revision petitioner is not entitled to get the Ex-parte decree set aside, since they are not given sufficient reason for the non appearance. Therefore, he contended that Trial Court as well as Lower Appellate Court rightly rejected the application filed to set aside the Ex-parte decree.

6.I heard Ms.P.T.Rama Devi, learned counsel appearing for the petitioner and Mr.Thiruvengkatasamy, learned counsel for the respondents and perused the entire records.

7.It is seen from the records that as against the defendant, an Ex-parte decree came to be passed on 30.03.2009. It is also seen that the defendant/revision petitioner filed an application under Section 5 of Limitation Act to set aside the Ex-parte decree and the same was allowed by the Trial Court by accepting the reason stated in the affidavit. The consequent application filed in I.A.No.542 of 2009, to set aside the Ex-parte decree was dismissed by the Trial Court, as well as Lower Appellate Court on the ground that the reason assigned by the revision petitioner is not sufficient and the same is also not bonofide one.

8.In order to determine the application under Order 9 Rule 13 of C.P.C., the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so, sufficient cause is, thus the cause for which the defendant could not for blamed for his absence. Therefore the applicant must approach the Court with a reasonable defence. Sufficient cause is a question of fact and the Court has to exercise its discretion in the varied and special circumstance in the case at hand. There cannot be a strait-Jacket formula of universal application.

9. At this juncture, it is seen that when the trial Court accepted the reason stated in the condone delay application and allowed the same. Whereas the trial Court has not accepted the reason to set aside the Ex-parte decree, it cannot be said that reason stated by revision petitioner is acceptable for the condone delay, are not acceptable for set aside the Ex-parte decree.

10. In the case on hand, admittedly, there was delay and such delay was sought to be explained by the defendant with some reason and same has been accepted by trial Court. When the explanation of delay and Ex-parte decree is one and same i.e., on the ill health of revision petitioner, the Trial Court and Lower Appellate Court ought not to have dismissed the consequent application to set aside the Ex-parte decree. Therefore the Trial Court and Lower Appellate Court committed an error in dismissing the application to set aside the Ex-parte decree.

11. In view of the same, this Court find merit to interfere with the order of Courts below and accordingly, the orders of the Courts below are set aside.

12.In the result:

(a) The Civil Revision Petition is allowed by setting aside the Judgment and decree passed in C.M.A.No.8 of 2010, dated 16.06.2011, on the file of the learned Sub Court, Mannargudi, confirming the fair and final order passed in I.A.No.542 of 2009 in O.S.No.38 of 2008, dated 16.12.2009 on the file of learned District Munsif Court, Mannargudi, on condition that the petitioner should pay a sum of Rs.3000/- as cost, to the respondents 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 period of time, the trial Court namely, the learned District Munsif Court, Mannargudi is hereby directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the same within a period of three months thereafter and both the parties are hereby directed to give their fullest co-operation for early disposal of the suit.

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06.03.2017

Note:Issue order copy on 30.01.2019
vs

Index:Yes
Internet:Yes

To
The District Munsif Court, Mannargudi.

M.V.MURALIDARAN,J.

VS



**Pre-delivery order made in
CRP(NPD)No.3870 of 2012**

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