

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4681 of 2012

D.Sundararajan

.. Petitioner

Vs.

1.G.Hemalatha

2.R.Thanigaivelu

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 11.09.2012 passed in I.A.No.17205 of 2010, in O.S.No.8631 of 2005, on the file of the V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Manickavel

For Respondents : Mr.M.Christopher (for R1)

No Appearance (for R2)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed by the learned V Assistant Judge, City Civil Court, Chennai, made in I.A.No.17205 of 2010 in O.S.No.8631 of 2005, dated 11.09.2012, by allowing the same.

2.The case of the revision petitioner is that the 1st respondent herein has filed a suit for permanent injunction in O.S.No.8631 of 2005 as against the revision petitioner. On the receipt of notice from the trial Court the revision petitioner entered appearance through a counsel. Thereupon the revision petitioner was under an impression that his counsel would take care of the case. That apart the said counsel also filed a suit in O.S.No.8858 of 2005 on behalf of the revision petitioner before the learned VIII Assistant Judge, City Civil Court, Chennai. Therefore, the revision petitioner was under a bonafide belief that his counsel would take care of both the suits. Being so, in the last week of June 2010 the 1st respondent herein illegally trespassed into the suit property, for which the revision petitioner immediately approached his counsel instructing him to get an urgent orders to prevent the 1st respondent's illegal trespass. However, the revision petitioner's counsel by giving an evasive reply

that he is not interested in conducting the case any longer, has returned the case bundles to the revision petitioner requesting to engage any other counsel.

3. Thereafter the revision petitioner engaged the present counsel and through him came to know that he suffered an ex-parte decree in O.S.No.8631 of 2005 dated 30.06.2006 for non filing of written statement. It was further found that the revision petitioner's earlier counsel failed to make Copy Application within time, from the date of ex-parte decree. Whereas he applied for copy only in the year 2010 and was issued with the copy of judgment and decree on 05.09.2010. Whereupon the revision petitioner filed an interlocutory application in I.A.No.17205 of 2010 under Section 5 of Limitation Act to condone the delay of 1505 days in filing the application to set aside the ex-parte decree dated 30.06.2006. However, without the proper appreciation of the fact that the delay caused in filing the application to set aside the ex-parte decree is neither willful nor wanton, but the same is because of the failure of the revision petitioner's previous counsel to conduct the case and the learned trial Judge has dismissed the application by order dated 11.09.2012. The said order is impugned in this Civil Revision Petition.

4.I heard Mr.R.Manickavel, learned counsel appearing for the revision petitioner and Mr.M.Christopher, learned counsel appearing for the 1st respondent and there is no representation for the 2nd respondent and perused the records.

5.The learned counsel for the revision petitioner would submit that having received notice from the trial Court, the revision petitioner entered appearance through a counsel before the Trial Court in O.S.No.8631 of 2005, who filed one another suit in O.S.No.8858 of 2005 on behalf of the revision petitioner before the learned VIII Assistant Judge, City Civil Court, Chennai. The revision petitioner was hence under a bonafide belief that his counsel would take care of both the suits. But only in the year 2010 when the revision petitioner urged his counsel for urgent orders to prevent the 1st respondent's illegal trespass and the returning of the case bundles to the revision petitioner by his earlier counsel, requesting to engage some other counsel, the revision petitioner came to know that his earlier counsel failed to defend the suit.

6.The revision petitioner thereafter engaged the present counsel and managed to receive the Judgment and Decree only in the year

2010. Thus he filed an application under Section 5 of Limitation Act to condone the delay of 1505 days in filing the application to set aside the ex-parte decree dated 30.06.2006. But the same came to be dismissed erroneously on a stringent approach. The learned trial Judge ought to have dealt with a liberal approach so as to advance substantial justice.

7. This Court has closely perused the records and upon hearing the arguments of the learned counsel for the petitioner, it is seen that the sole reason stated by the revision petitioner for the delay of 1505 days is that he was neither informed about the suit status nor the suit was conducted by the earlier counsel. This Court is not inclined to accept the same. In fact this Court is displeased with such an evasive conduct of the revision petitioner and his attitude of blaming his counsel. At this juncture, it is needless to say that it is the duty of every litigant to be in contact with their counsels and get updated with their case status, besides instructing counsel with the subsequent developments therein. In the case on hand there is no say in the affidavit as well as the petition as to when he received knowledge of the ex-parte decree from the present counsel. Apart from this, he has also not stated when he received the change of vakalat and why he

has not approached his earlier counsel from the date of decree dated 30.06.2006 till the year of 2010. There is no absolute reason given by the petitioner.

8.It is a settled principle of law that length of delay is immaterial, but cogent and convincing reason must be assigned. Further each and every day delay should be explained properly. It is needless to say that it is the duty of the revision petitioner to convince the Court with sufficient and bonafide reasons for the delay.

9.Apart from this, it is well settled in law and the orders of the Hon'ble Supreme Court, the petitioner must have give the proper reason for each and every day, but it is totally silent on the part of the petitioner.

10.For the foregoing discussion, I am of the considered view that the reason assigned by the revision petitioner is not sufficient to condone the huge delay of 1505 days. There is no valid reason to interfere with the order of the trial Court and the revision petitioner failed to make out a case. Hence the order of the trial Court is hereby confirmed.

11.In the result, this Civil Revision Petition is dismissed. No costs.

31.07.2017

Speaking order
Index:Yes

vs

To
The V Assistant Judge,
City Civil Court, Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.4681 of 2012

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