



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.1692 of 2015 (NPD)

Rajendran, S/o.Chellaiah

.. Petitioner

Vs.

Murugaiah, S/o.Rengasamy

.. Respondent

Civil Revision Petition filed under Section 115 of the code of Civil Procedure, challenging the fair and decreetal order, dated 03.10.2013, made in I.A.No.247 of 2013 in O.S.No.7 of 2011, on the file of the District Munsif Court, Pudukottai.

For Petitioner : Mr.N.Balakrishnan

For Respondent : Mr.R.Devaraj

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order, dated 03.10.2013, made in I.A.No.247 of 2013 in O.S.No.7 of 2011, on the file of the District Munsif Court, Pudukottai.

2. The petitioner is third defendant and the respondent is the plaintiff in the suit in O.S.No.7 of 2011 on the file of the District Munsif Court, Pudukottai. The respondent filed the suit for specific performance and also for permanent injunction. The petitioner remained ex-parte in the suit and an ex-parte decree was passed on 04.08.2011. Therefore, the petitioner filed I.A.No.247 of 2013 to condone the delay in filing application to set aside the ex-parte decree. According to the petitioner, the date of hearing of the suit was 09.03.2011. On that day, he did not appear before the Court and therefore, he was set ex-parte and on 04.08.2011 an ex-parte decree was passed. Further, according to the petitioner, the petitioner was suffering from jaundice from 09.03.2011 and was taking continuous Ayurvedic treatment and he came to know about the ex-parte decree only when he received notice in the E.P. Immediately, he engaged an Advocate and filed Vakalath and after verifying the records, he came to know about the ex-parte decree and filed an application in I.A.No.247 of 2013 to set aside the said ex-parte decree and to condone the delay in filing the said ex-parte decree. The delay is neither willful nor

wanton, but due to the reasons stated above.

3. The respondent filed counter and opposed the said application. The respondent stated that the petitioner is not party in E.P.No.25 of 2012 and no notice was issued and served on the petitioner in the E.P. The petitioner has not filed any document to prove that he was suffering from jaundice and was taking continuous Ayurvedic treatment. The petitioner has not approached the Court with clean hands, but has appeared at the instigation of the defendants 1 and 2 making false allegations and prayed for dismissal of the application.

4. The learned District Munsif, Pudukottai, vide order dated 03.10.2013, dismissed the application holding that the petitioner is not a party to E.P.No.25 of 2012 and no notice was served on the petitioner in the E.P. and he has not filed any document and let any oral evidence to prove that he was suffering from jaundice and taking continuous Ayurvedic treatment.

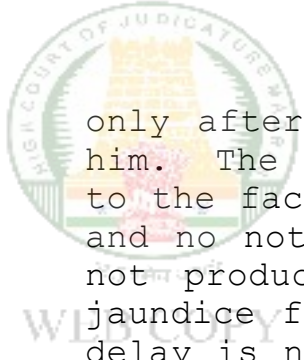
5. Against the said order of dismissal, dated 03.10.2013, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioner submitted that the learned District Munsif, Pudukkottai, failed to consider that the petitioner was suffering from jaundice and therefore, he could not attend the Court on the date of hearing. He further submitted that the learned District Munsif failed to see that the defendants 1 and 2 are not owners of the suit property on the date of filing of the suit. The petitioner has given valid and sufficient reason for condoning the delay of 529 days in filing the application to set aside the ex-parte decree.

7. The learned counsel for the respondent submitted that the petitioner has not approached the Court with clean hands and has uttered falsehood stating that he received notice in the E.P. He further submitted that the petitioner has filed the application only at the instigation of the defendants 1 and 2 with a view to drag on the proceedings and therefore, he prayed for dismissal of the Civil Revision Petition.

8. I have considered the arguments advanced by the learned counsel appearing for the parties and perused the materials available on record.

9. From the materials available on record, it is seen that the ex-parte decree was passed on 04.08.2011. Earlier, the petitioner was set ex-parte on 09.03.2011. According to the petitioner, he ~~could not appear~~ on 09.03.2011 before the Court, due to the fact that he was suffering from jaundice and was taking continuous Ayurvedic treatment and came to know about the ex-parte decree



only after the notice in the Execution Proceedings was served on him. The reason given by the petitioner for the delay is contrary to the facts. The petitioner is not a party in E.P.No.25 of 2012 and no notice was ordered and served on him. The petitioner has not produced any document to show that he was suffering from jaundice from 09.03.2011. It is well settled that the length of delay is not the criteria and the reason given for condonation of delay must be bona fide and sufficient to condone the delay. In the present case, the petitioner has not given valid and sufficient reason to condone the delay. In the circumstances, the learned District Munsif has rightly considered these facts and dismissed the application. There is no irregularity or illegality in the order dated 03.10.2013, passed in I.A.No.247 of 2013, warranting interference by this Court.

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

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Pudukottai.

Copy To:
The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.DEVARAJ, Advocate, SR No. 4263.

SMN2
PSM/PN/10.02.2017/3P/4C

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