



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.2067 of 2017

Parameshwari ... Petitioner/Petitioner/Petitioner/
Plaintiff

vs.

1) M.P. Subramaniam
2) V.M.S. Saravanabhava
3) P. Thirumalaisamy

... Respondents/Respondents/Respondents/
Defendants

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 28.06.2017 passed in I.A.No.869 of 2016 in I.A.No.997 of 2015 in O.S.No.1361 of 2004 on the file of District Munsif Court, Palani.

For Petitioner : Mr.M.P.Senthil

ORDER

This revision petition has been filed against the fair and decreetal order dated 28.06.2017 passed in I.A.No.869 of 2016 in I.A.No.997 of 2015 in O.S.No.13261 of 2004 on the file of District Munsif Court, Palani.

2.The revision petitioner is the plaintiff and the respondents are defendants in O.S.No.1361 of 2004 on the file of District Munsif Court, Palani. The suit was filed for permanent injunction and the same was dismissed for non prosecution on 09.02.2007. To restore the suit, the revision petitioner/plaintiff presented a petition under Order 9 Rule 9 CPC which was returned for compliance of certain defects. The petitioner re-presented the Petition under Order 9 Rule 9 CPC with delay, hence, he filed I.A.No.997/2015 to condone the delay of 1778 days. The said interlocutory application was dismissed for non prosecution on 17.06.2016. Therefore, the revision petitioner has filed the present interlocutory application in I.A.No.869 of 2016 to restore I.A.No.997/2015 with the delay of 108 days. The said petition was dismissed. Hence, this revision petition has been filed against the said order.



the petitioner without even advertent to the reasons assigned in the affidavit filed in support of the application. It is further contended that the Trial Court ought to have afforded one more opportunity to the plaintiff to resolve the issue in the suit.

4. Having regard to the limited scope of the revision and the order that is going to be passed, notice to respondents is not necessary.

5. Perusal of the impugned order shows that the revision petitioner as plaintiff filed O.S.No.1361 of 2004 on the file of District Munsif Court, Palani, for permanent injunction, which was dismissed for non prosecution on 09.02.2007. To restore the suit, he filed I.A.No.155/12 with I.A.No.154/12 to condone the delay of 1778 days in filing I.A.No.155/12. The said applications were subsequently dismissed as 'Not pressed' on 22.09.2015 at the instance of the revision petitioner. Thereafter, the revision petitioner filed I.A.No.997/2015 which was dismissed on 17.06.2016 for non prosecution. Hence, the petitioner filed the present interlocutory application.

6. The impugned order further reads that for delay, the petitioner has averred in the present interlocutory application that the Advocate who appointed by him initially to prosecute the case died and since he underwent a surgery in his eye, he could not contact his Advocate. However, no documentary evidence was produced to prove the same. Hence, the Trial Court taking note of the ratio laid down by the Hon'ble Supreme Court in **Payal Ashok Kumar vs. Cpt. Ashok Kumar** reported in **1992 (3) SCC 116**, wherein, the Apex Court held that if there are delaying tactics and non-cooperation on the part of the party, he cannot seek indulgence of the Court. The test to be applied is whether the party honestly intended to remain present at the hearing of the suit and did his best to do so, dismissed the interlocutory application.

7. As rightly observed by the Trial Court, the revision petitioner has not produced any materials to prove the defence of eye surgery. Further, from the facts narrated above, it could be deduced that the revision petitioner is adopting dilatory tactics thereby making the other party in prejudice which cannot be approved. There is no infirmity or perversity in the impugned order warranting interference by this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

/True Copy/



To

The District Munsif Court,
Palani.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 87272

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AE/SKN RSK/SAR2/28.11.2017/3P/3C

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