

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No.3620 of 2017
and
CMP. No.16915 of 2017

R.Sadasivam .. Petitioner

Vs

R.Udayakumar .. Respondent

PRAYER: This Civil Revision Petition is filed under Article 115 of the Code of the Civil Procedure, to set aside the order dated 06.07.2017 made in I.A.351/2017 in O.S.1726/2010 on the file of the learned I Additional District Munsif, Coimbatore.

For Petitioner :Mr.Palani Selvaraj

For Respondent :No Appearance

ORDER

This Civil Revision Petition is filed against the dismissal order dated 06.07.2017 made in I.A.351/2017 in O.S.1726/2010 on the file of the learned I Additional District Munsif, Coimbatore.

2. The learned counsel for the petitioner would submit that the respondent has filed the suit in O.S. No.1726 of 2010 for recovery of money and other reliefs. In the aforesaid suit, the petitioner did not appear before the Court below on 08.12.2011, resultantly, an exparte decree was passed on 08.12.2011. Thereafter, the petitioner has filed an application in I.A. No.351 of 2017 to condone the delay of 1888 days in filing to set aside the exparte decree passed on 08.12.2011. In the aforesaid application, the petitioner has stated that he came to know about the said exparte decree only after receiving a notice from the Court in E.P.147 of 2016 and engaged the present counsel and has filed the aforesaid I.A. before the Court below.

3. According to the learned counsel for the petitioner, the earlier counsel appearing for the petitioner before the Court below did not follow the earlier petition in CFR. No.27531 dated 18.10.2016 to set aside the exparte decree and failed to number the same. Hence, he engaged the present counsel to follow the petition and EP proceedings. The present counsel has traced out the petition filed on 18.10.2016 and could not trace the same for numbering. Hence, the said application has

been filed to set aside the exparte decree on 08.12.2011 along with the condone delay application.

4.The learned counsel for the petitioner would further submit that the aforesaid delay neither willful nor wanton and only for the aforesaid bonafide reasons. Further the learned counsel for the petitioner is relying upon the judgment reported in **2015 (1) CTC 811 in the case of Ajay Kumar Gulecha vs. J.Vijayakumar and another**, wherein, this Court has held that the rights of the parties to be decided on merits and same has to be decided in the interest of justice requires an opportunity between the parties. Therefore, the order passed by the Court below is liable to be set aside.

5.Heard the learned counsel appearing for the revision petitioner. Notice has been served on the respondent, but none appeared on his behalf.

6.On a perusal of the affidavit filed by the revision petitioner, the petitioner has stated the facts for the non appearance before the Court

below on 08.12.2011 is not sufficient and the reasons stated in the affidavit has not contained the particulars. The petitioner has not vigilant enough to establish the sufficient reasons for the inordinate delay of 1888 days to set aside the exparte decree. Further in support of the said contention of the petitioner, he has not adduced any oral or documentary evidence to substantiate his claim for the aforesaid inordinate delay.

7. In the light of the decision of the Hon'ble Supreme Court, in the case of **H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER**, reported in (2015) 1 SCC 680, wherein it is held as follows:

“ 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for

specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

8.From the aforesaid decisions, the Hon'ble Supreme Court has held that the petitioner has not disclosed the reasons and particulars to satisfy the Court for condoning the inordinate delay. In the present petition, the petitioner has not shown the sufficient reasons in the affidavit with particulars for the enormous delay in filing the said application and the same has been filed by the petitioner in a casual manner without giving any valid or acceptable reason. Therefore, the contention of the petitioner cannot be sustainable and the same is liable to be rejected.

9.In the light of the aforesaid facts and submissions and decisions cited supra, there is no error or illegality in the order passed by the Court below. Hence, this Court does not warrant to interfere with the order passed by the Court below.

D. KRISHNAKUMAR J.,

rkp

10. Accordingly, the Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

30.01.2018

Index: Yes/ No
Internet: Yes/No
Speaking order/Non Speaking Order
rkp
To

The I Additional District Munsif,
Coimbatore District.

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