

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(NPD) No.4643 of 2017
and
C.M.P.No.21898 of 2017

V.Baladurai .. Petitioner

vs

V.Rukmani .. Respondent

The Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 21.06.2017 in I.A.No.574 of 2015 in O.S.No.152 of 2012 on the file of the Sub Court, Pollachi.

For Petitioner ... Mr.L.Mouli

For Respondent ... Mr.D.R.Arunkumar

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ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 21.06.2017 in I.A.No.574 of 2015 in O.S.No.152 of 2012 on the file of the Sub Court, Pollachi.

2. The brief facts of the case are as follows:

The plaintiff filed a suit in O.S.No.152 of 2012 for partition and separate possession. The case was posted on 26.11.2013 for filing written statement. As the defendants failed to appear before the Court and on non filing of the written statement, a preliminary ex-parte decree was passed. The first defendant filed I.A.No.574 of 2015 to condone the delay of 874 days to set aside the preliminary ex-parte decree, under Section 5 of the Limitation Act and filed I.A.No.575 of 2015 to set aside the preliminary ex-parte decree dated 11.01.2013. The Court below dismissed, both the applications on 21.06.2017 by passing two separate orders. Challenging the order dated 21.06.2017 passed in I.A.No.575 of 2014, the petitioner/first defendant herein has filed the present Civil Revision Petition before this Court.

3. Heard the learned counsel for the petitioner/1st defendant and the learned counsel for the respondent/plaintiff and perused the materials available on record.

4. The learned counsel for the petitioner/1st defendant submitted that the Court below has not considered both the

applications in I.A.Nos.574 and 575 of 2015 in proper perspective though sufficient reasons have been stated in the affidavits to condone delay in filing an application and to set aside the preliminary ex-parte decree and dismissed the same without assigning any reason.

5. The learned counsel for the petitioner/1st defendant further submitted that the Court below without appreciating the case of the petitioner, had simply passed the dismissal order holding that as the main petition has been dismissed, the said application also dismissed. The learned counsel also submitted that the Court below ought to have considered the application filed under Section 5 of the Limitation Act and thereafter, decided the application in I.A.No.575 of 2015 on merits and in accordance with law. Hence, he requested to allow the Civil Revision Petition by setting aside the order dated 21.06.2017 passed in I.A.No.575 of 2014 and take the suit on file.

6. The learned counsel for the respondent/plaintiff submitted that the Court below has considered the delay application in I.A.No.574 of 2015 and rejected the contention of the petitioner that the petitioner has not shown sufficient reasons to condone the delay. The learned counsel further submitted that the Court below rightly

dismissed the applications filed to condone the delay of 874 days and to set aside the preliminary ex parte decree as the suit itself was dismissed for non appearance and non filing of written statement. Moreover, though the petitioner had the knowledge about the preliminary ex parte decree passed on 11.01.2013, he filed I.A.Nos.574 and 575 of 2015 nearly with a delay of eight months.

7. The learned counsel for the respondent/plaintiff further submitted that the petitioner/1st defendant filed I.A.No.1084 of 2014 in I.A.No.848 of 2013 to set aside the ex-parte order dated 22.01.2014 passed in I.A.No.848 of 2013 and thereafter, he filed the present applications only after eight months and hence, the petitioner is not entitled to get any relief to condone the delay of 874 days in filing the application to set aside the preliminary ex-parte decree. Therefore, no interference is warranted in setting aside the preliminary ex-parte decree and hence, the Civil Revision Petition has to be dismissed.

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8. On perusal of the records it is seen that the Court below has not considered the reasons stated in the affidavits filed in support of the applications and dismissed I.A.No.575 of 2015 without assigning

any proper reason and also dismissed I.A.No.574 of 2015 holding that the application to set aside the preliminary ex-parte decree was dismissed and therefore, the present application to condone the delay of 874 days is also dismissed.

9. It is further seen that the Court below, without considering the reasons stated in the affidavits filed in support of the applications, without appreciating the case of the petitioner and the nature of the relief for sought in the application, had simply dismissed I.A.No.574 of 2015. Consequently, dismissed I.A.No.575 of 2015 that has been filed to set aside the preliminary ex-parte decree. Therefore, it is clear that the Court below has dismissed the application in I.A.No.575 of 2015 to set aside the preliminary ex-parte decree with reasons and by relying the aforesaid order, dismissed the condone delay application in I.A.No.574 of 2015. Therefore, the petitioner has rightly pointed out that the Court below has misunderstood the facts and erroneously passed the order.

10. From the above facts, the trial Court has not dealt with the application under the manner known to law, passed the orders in a casual manner. Therefore, the order passed in I.A.No.574 of 2015 in

O.S.No.152 of 2012 is liable to be set aside.

11. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned counsel on either side, this Court is inclined to pass the following order:

"(i)The order dated 21.06.2017 passed in I.A.No.574 of 2015 is set aside and the same is remanded back to the Subordinate Court, Pollachi consider afresh.

(ii)The learned Subordinate Judge, Pollachi is directed to dispose of I.A.No.574 of 2015 on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order after giving due opportunities to both sides

(iv)Both the parties are directed to co-operate with the trial."

In the light of the above said facts, the Civil Revision Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

18.01.2018

Index: Yes/No.

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To

The Subordinate Judge,
Pollachi.



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D.KRISHNAKUMAR,J.

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Date: 18.01.2018