

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE M.S.SATHYANARAYANAN

C.R.P. No.1123 of 2013

Karunanidhi

... Petitioner

Vs.

Arul

... Respondent

Prayer: Civil Revision Petition filed under Article 115 of the Civil Procedure Code against the order and decree dated 07.11.2012 made in I.A.No.309 of 2012 in O.S.No.50 of 2002, on the file of learned District Munsif, Vanur.

For petitioner : Mr.P.Dinesh Kumar

For Respondents: Ms.J.Prithvi for
Mr.Kaithamalai Kumaran

ORDER

The revision petitioner is the defendant in O.S.No.50 of 2002, on the file of the court of District Munsif, Vanur.

2. The respondent in the present civil revision petition filed I.A.No.309 of 2012 under section 5 of the Limitation Act to condone the delay of 1774 days in filing the application to set aside the order dated 10.08.2007 of dismissal for default of the suit in O.S.No.50 of 2002. The said order was confirmed by the final order dated 07.11.2012 on terms and challenging the illegality of the same, the revision petitioner has come forward to file the civil revision petition.

3. The respondent / plaintiff filed the above said suit praying for declaration that the suit pathway is a common one and also for permanent injunction restraining the defendants to interfere with the usage of the pathway and also for mandatory injunction to remove the construction put up on the suit pathway. The revision petitioner / defendant has entered

appearance and filed his written statement. It appears from the materials that the original suit was decreed exparte and the revision petitioner / defendant filed an application to set aside the exparte decree and it was allowed on terms. Subsequently, on account of non appearance of the plaintiff, the suit came to be dismissed for default on 10.08.2007.

4. Learned counsel for the revision petitioner / defendant has drawn the attention of this court to the affidavit filed in support of I.A.No.309 of 2012 and would submit that as per the reasons adduced, the clerk of the counsel Gajendravaradan did not inform the setting aside of the exparte decree and though the suit has been adjourned twice, the plaintiff did not appear for the purpose of prosecuting the suit and the suit came to be dismissed on 10.08.2007, and in the absence of any specific or reasonable reason for such huge delay, the application in I.A.No.309 of 2012 ought not to have been allowed by the learned District Munsif, Vanur, on a meagre payment of Rs.500/-, and prays for interference.

5. Per contra, learned counsel for the respondent / plaintiff would submit the revision petitioner had the benevolence of setting aside the exparte decree as the clerk attached to the counsel for the plaintiff has failed to inform about the setting aside and also not informed about the date of hearing and therefore, the respondent was under the genuine impression that the exparte decree has not been set aside and on becoming aware of the same, he immediately contacted the advocate and filed the application for restoration of the suit and would further submit that, the suit was filed for comprehensive relief of declaration and mandatory injunction and in the event of order of dismissal of suit being sustained, he may not be able file a fresh suit for the same cause of action and that it would be barred by limitation and therefore, prays for sustaining the impugned order.

6. This Court has carefully considered the rival submissions and also perused the materials placed. The fact remains that the revision petitioner / defendant had the benevolence of exparte decree passed against him and he has also paid the costs for setting aside the exparte decree. It is also to be noted at this juncture that the revision petitioner / defendant as well as the respondent / plaintiff are from rural areas and normally they would depend upon the communication from the office of the advocate. It is the specific case of the respondent / plaintiff that the fact of setting aside of the exparte decree has not been informed to him by the advocate clerk despite the fact he contacted him, which resulted in such huge delay in filing the application for restoration of the suit.

7. This court has taken into consideration the fact that the suit is filed for the relief of declaration, permanent and mandatory injunction, and is of the view that a chance has to be afforded to the respondent / plaintiff to prosecute the suit on merits of the matter. This court has also taken into consideration the fact that in the event of setting aside of the order of restoration of the suit, the respondent may not be able to file a fresh suit for the same cause of action and that it would be barred by limitation. The trial court, while restoring the suit, has imposed a meagre cost of Rs.500/- and this court is of the opinion that it requires enhancement.

8. In the result, the Civil Revision Petition is dismissed, confirming the fair and final order dated 07.11.2012 made in I.A.No.309 of 2012 in O.S.No.50 of 2002 on the file of District Munsif, Vanur and the cost of Rs.500/- imposed by the trial court, and the respondent / plaintiff is directed to pay a further cost of Rs.2500/- (Rupees Two Thousand Five Hundred only) to the revision petitioner / defendant on or before 26.09.2018. Post the matter on 28.09.2018 for reporting compliance. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kst

To

The District Munsif Court,
Vanur, Villupuram District,
Tamil Nadu.

+1cc to M/S.S.Kaithamalai kumaran, Advocate Sr.60390.

C.R.P. No.1123 of 2013

gp[col]
srg 20/09/2018