

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2018

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THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(PD) No.1683 of 2016
and
C.M.P.No.9007 of 2016

Selvan .. Petitioner

vs

Kalavathi .. Respondent

The Civil Revision Petition filed under Section Article 227 of the Constitution of India to set aside the fair and decretal order dated 16.03.2015 in I.A.No.38 of 2015 in O.S.No.314 of 2011 on the file of the learned Second Additional District Munsif, Erode.

For Petitioner ... Mr.N.Manokaran

For Respondent ... Mr.C.Kulanthaivel

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 16.03.2015 in I.A.No.38 of 2015 in O.S.No.314 of 2011 on the file of the learned Second Additional District Munsif, Erode.

2. According to the petitioner, the respondent filed a suit in O.S.No.314 of 2011 on the file of the learned Second Additional District Munsif, Erode seeking partition against the revision petitioner. In the said suit, I.A.No.38 of 2015 in O.S.No.314 of 2011 has been filed under Section 9 Rule 13 and Section 151 of CPC to condone the delay of 1117 days in filing the application to set aside the exparte preliminary decree dated 2.12.2011. The said application was dismissed on 16.03.2015. Challenging the order dated 16.03.2015, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner/defendant submitted that the reasons stated in the affidavit filed in support of the application to condone the delay has not been appreciated by the Court below. Therefore, the order passed by the Court below is liable to be set aside.

4. The learned counsel for the respondent/plaintiff submitted that originally, the suit was filed on 29.08.2011 and the petitioner was represented through his counsel on 01.07.2011. Thereafter, he was set as ex-parte on 19.11.2011 and the preliminary exparte decree was

passed on 02.12.2011. Subsequently, I.A.No.234 of 2013 was filed on 14.08.2012 for passing of final decree. In the said application, though notice was served on the petitioner on 23.04.2013, he has not appeared on that day, the petitioner was set exparte on 23.04.2013 in I.A.No.234 of 2013 and exparte final decree was passed. Therefore, the petitioner filed an application in I.A.No.387 of 2013 to set aside the exparte final decree passed in I.A.No.234 of 2013 and the same was allowed on 26.11.2013 by setting aside the exparte order. Thereafter, the petitioner filed an application in I.A.No.39 of 2014 to implead one Rajeswari as party in the aforesaid final decree proceedings on 18.12.2014 and the same was allowed on 10.02.2014. Again, amendment application along with amended plaint was filed on 21.01.2014 and the trial Court allowed the said amendment application on 10.02.2014. Thereafter, Advocate Commissioner was appointed and visited the suit property on 28.06.2014. Again, the respondent filed an application seeking police protection on 08.01.2015 and thereafter, the petitioner filed the present application in I.A.No.38 of 2015 to condone the delay of 1117 days in filing the application to set aside the exparte preliminary decree and rightly dismissed by the Court below. Therefore, the Civil Revision Petition is liable to be dismissed.

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

6. On a perusal of the records, it is seen that the petitioner filed I.A.No.38 of 2015 with an inordinate delay of 1117 days in filing the application to set aside the exparte preliminary decree, the petitioner had the knowledge about the exparte preliminary decree on 23.04.2013, the revision petitioner has filed the application, only in the year 2015. Further, the petitioner has not stated any sufficient reason in the affidavit to condone the 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.

On the facts of present case on hand, revision petitioner has not shown satisfactory explanation to condone the inordinate delay, without disclosing the particulars. Therefore, there is no error or illegal in the order passed by the Court below.

8. Considering the aforesaid facts and circumstances of the case and the decision cited supra, this Court is inclined to pass the following order:

"(i)The order dated 16.03.2015 passed in I.A.No. 38 of 2015 in O.S.No.314 of 2011 on the file of the learned Second Additional District Munsif, Erode is confirmed.

D.KRISHNAKUMAR,J.

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(ii)The Civil Revision Petition is dismissed.
There is no order as to costs. Consequently,
connected miscellaneous petition is closed.

21.02.2018

Speaking/Non speaking order
Index: Yes/No.

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To
The Second Additional District Munsif,
Erode.

**C.R.P.(PD)No.1683 of 2016****WEB COPY**