

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CIVIL REVISION PETITION(NPD) No.3243 of 2016
and
C.M.P.No.16450 of 2016

Raji .. Petitioner

vs

Ayyasamy .. Respondent

The Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 18.08.2016 passed in I.A.No.662 of 2015 in O.S.No.64 of 2014 on the file of the District Munsif Court, Dharmapuri.

For Petitioner ... Mr.C.Munusamy

For Respondent ... Mr.R.Karthikeyan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 18.08.2016 passed in I.A.No.662 of 2015 in O.S.No.64 of 2014 on the file of the District Munsif Court, Dharmapuri.

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

The respondent filed a suit in O.S.No.64 of 2014 for permanent injunction against the petitioner/first defendant and other defendants. As the defendants failed to appear before the Court below and non-filing of written statement, a preliminary ex-parte decree was passed in the aforesaid suit on 24.04.2015. Hence, the petitioner/1st defendant filed an application in I.A.No.662 of 2015 under Section 5 of the Limitation Act to condone the delay of 40 days to file an application to set aside the exparte decree dated 24.04.2015. The Court below dismissed the said application by order dated 18.08.2016. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioner.

3.The learned counsel for the petitioner/1st defendant submitted that the learned counsel, who appeared for the petitioner before the Court below has not informed the filing of written statement and the particulars about the suit to the petitioner. Hence, the petitioner failed to file a written statement in the suit and the delay caused in filing the application to set aside the exparte decree is neither wilful nor wanton. Hence, the impugned order passed by the Court below has to be set aside.

4.The learned counsel for the respondent submitted that the petitioner has not given any proper reason to satisfy the Court to condone the delay. Therefore, the Court below rightly dismissed the application and hence, the Civil Revision Petition is liable to be set aside.

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

6.On perusal of the records it is seen that the learned counsel, who appeared before the Court below had not communicated any information to the petitioner and therefore, the petitioner was not in a position to appear before the Court on 24.04.2015. Hence, exparte decree was passed against the petitioner and other defendants.

7.In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

D.KRISHNAKUMAR,J.

cla

Considering the above said facts at length, submissions made by the learned counsel for the petitioner and in the light of the decision cited supra, the order passed in I.A.No.662 of 2015 in O.S.No.64 of 2014 is liable to be set aside and the Court below is inclined to pass the following Order:

"(i)The order dated 18.06.2016 passed in I.A.No.662 of 2015 in O.S.No.64 of 2014 on the file of the District Munsif Court, Dharmapuri is set aside.

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

13.03.2018

Index: Yes/No.
Speaking/Non Speaking Order
cla
To
The District Munsif,
Dharmapuri.

**C.R.P.(NPD)No.3243 of 2017
and C.M.P.No.16450 of 2016**



WEB COPY **Date: 13.03.2018**