

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.464 of 2016 and C.M.P.No.2369 of 2016

1 Sanguvathi
2 Thaianayagi

... Petitioner/Defendants 7 & 8

Vs

Sankaran

... Respondent/Plaintiff

This Civil Revision Petition is filed under Section 115 of C.P.C. against the fair and decreetal order dated 13.10.2015 made in I.A.No.912 of 2012 in O.S.No.314 of 2003 on the file of the Principal District Munsif, Villupuram.

For Petitioners : Mr.C.Prabakaran
For Respondent : Mr.D.Rajasekar

सत्यमेव जयते

ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.314 of 2003 before the Principal District Munsif, Villupuram for declaration and recovery of possession against the petitioners herein. In the aforesaid suit, exparte decree was passed on 19.11.2007. Thereafter, the respondent has filed a petition in E.P.No.200 of 2007 to execute the decree.

Petitioner has filed an application in I.A.No.912 of 2012 to condone the delay

of 2686 days in filing the application to set aside the ex parte decree. The court below without appreciating the contention of the petitioner in proper perspective dismissed the application. Challenging the said order, the present Civil revision petition has been filed before this Court.

2 According to the learned counsel for the petitioner, in para 2 of the affidavit, petitioner has stated that the the respondent came to his house along with policeman and attempted to evict the petitioner. The petitioner entrusted the case to one Dhakshinamurthy, Advocate who is no more. After enquiry about the status of the case in the court, he came to that ex parte decree has been passed. The delay is neither wilful nor wanton. Therefore, the order passed by the court below is liable to be set aside.

3 On the contrary, the learned counsel for the respondent denied the reason stated in the affidavit filed in support of the petition. Petitioner has not given sufficient reason in the affidavit to condone the inordinate delay in filing the set aside application. The petitioner adopted dilatory tactics to delay the process of execution of the decree. Therefore, the Civil revision petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

5 The respondent has filed a suit for declaration and recovery of possession. Petitioner has not furnished any particulars for the inordinate delay in filing the set aside application, nor petitioner has stated sufficient reason for inordinate delay in filing the set aside application. Non furnishing of the particulars in the affidavit would cause prejudice to the respondent. Therefore, the Civil revision petition is liable to be set aside.

6 It is seen from the records that the learned counsel for the petitioner submits that even notice has not been served in the execution petition, the same is not proved by the revision petitioner. Therefore, the petitioner has not produced sufficient materials to show bonafide, to condone the inordinate delay in filing the set aside application.

7 In **DOHIL CONSTRUCTIONS CO. (P) LTD. VS. NAHAR EXPORTS LTD.**, [(2015) 1 SCC 680], the Hon'ble Supreme Court has held as under:

"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

D.KRISHNAKUMAR, J.

vaan

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."

In the light of the decision of the Hon'ble Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the court below.

8 In fine, the Civil revision petition fails and the same is dismissed accordingly. No costs. Connected miscellaneous petition is closed.

WEB COPY

05.03.2018

Index: Yes/No

vaan

To

The Principal District Munsif, Villupuram.