

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(NPD).No.614 of 2016
and CMP.No.3256 of 2016

K.Sundar

.. Petitioner

Vs

Suganthi Jayakumar

.. Respondent

PRAYER

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the petition and order of the Hon'ble XIV Assistant City Civil Judge, Chennai dated 31.07.2015 in IA.No.8234 of 2015 in OS.No.7877 of 2005.

For Petitioner : Mr.E.D.Sethupathi

For Respondent : Mr.R.Mangai Mannan

ORDER

According to the revision petitioner, the respondent has filed a money suit in OS.No.7877 of 2005 against the revision petitioner. In the aforesaid suit, the respondent has served summon. But the said summon was not received, since the revision petitioner / defendant had

vacated the house. Therefore, under Order V Rule 20 of the Civil Procedure Code, a paper publication was effected. Despite the same, the revision petitioner did not appear before the court below. Therefore, ex-parte decree was passed on 23.07.2007. Thereafter, the respondent has filed an execution petition in EP.No.4597 of 2014, wherein ex-parte order was passed on 04.12.2015. In the aforesaid EP, the revision petitioner has filed an application in EA.No.207 of 2016 to set aside the ex-parte order. The said application was dismissed. Challenging the aforesaid order, the revision petitioner has preferred an appeal in CMA.No.1 of 2017. In the aforesaid appeal, the Appellate court has directed the revision petitioner to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards part satisfaction of the decree on or before 07.12.2016. Challenging the aforesaid order, the revision petitioner has filed a Civil Revision Petition in CRP.No.683 of 2018 and the same was dismissed, however, four weeks time is granted to the revision petitioner to comply with the order dated 23.06.2017 passed by the Appellate court. Now, in the present Civil Revision Petition, the revision petitioner has challenged the order dated 31.07.2015 passed in IA.No.8234 of 2015 which was filed to condone the delay of 2918 days in filing an application to set aside the ex-parte decree passed in the above

suit in OS.No.7877 of 2005. The court below has dismissed the said application by stating that notice has been published through paper publication. Against the said order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the revision petitioner has not received any summon since he had vacated the premises. After the knowledge of the said execution petition, the petitioner has filed an application in the execution petition and also filed the instant application in the above suit to condone the delay in filing an application to set aside the ex-parte decree. The learned counsel for the revision petitioner would also submit that as directed by this Court in CRP.No.683 of 2018 dated 26.02.2018, the revision petitioner undertakes to deposit a sum of Rs.50,000/- within the time as may be fixed by this Court.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the materials available on record.

4. By considering the aforesaid facts, it is an admitted fact the revision petitioner has not received any summon in the aforesaid suit. Therefore, by providing an opportunity to the revision petitioner, this Court is inclined to interfere with the impugned order passed by the court below and to pass the following orders.

(i) The order passed in the instant application in IA.No.8234 of 2015 in OS.No.7877 of 2005 is set aside on condition that the revision petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of the suit in OS.No.7877 of 2005 on the file of XIV Assistant City Civil Court, Chennai within a period of six weeks from the date of receipt of a copy of this Order, failing which, the Civil Revision Petition stands dismissed without reference to this Court.

(ii) In the event of the above conditional order has been complied with by the revision petitioner, the court below has to pass an appropriate order in the set aside application within a period of four weeks thereafter.

(iii) Considering that the suit is of the year 2005, in the

event of the set aside application is allowed, the court below is directed to dispose of the suit in OS.No.7877 of 2005 on merits and in accordance with law as expeditiously as possible preferably on or before 31.07.2018.

(iv) On instructions, both the parties undertake to cooperate for the disposal of the above suit.

5. The Civil Revision Petition is allowed with above directions. Consequently, the connected miscellaneous petition is closed. No costs.

01.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

lok

Note: Issue order copy on 05.03.2018

WEB COPY

D. KRISHNAKUMAR J.,

lok

To
Hon'ble XIV Assistant City Civil Judge,
Chennai



CRP(NPD).No.614 of 2016
and CMP.No.3256 of 2016

WEB COPY

01.03.2018