



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) Nos.207 and 1766 of 2015 (NPD)
and

M.P. (MD) .Nos.1 & 2 of 2015 in C.R.P. (MD) .No.1766 of 2015

T.Malaikani

.. Petitioner in
both the petitions /
Petitioner / Defendant

Vs.

V.Kallakondan Nadar @
Kallavandan Nadar (died)

1.Rasathi
2.Murugesan @ David
3.K.Malaikani
4.K.Poomari

... Respondents in
both the petitions /
Respondent / Plaintiff

(R1 to R4 are brought on record as LR's of the deceased sole respondent, vide Court order dated 02.06.2017, made in C.M.P.(MD). Nos.2293 and 2294 of 2017 in C.R.P.(MD).No.1766/2015 and C.M.P.(MD). Nos.1892 and 1893 of 2017 in C.R.P.(MD).No.207 of 2015)

PRAYER in C.R.P. (MD) .No.207 of 2015:

Petition filed under Section 115 of C.P.C., praying to call for the records relating to the fair and decreetal order made in I.A.No.719 of 2014 in O.S.No.248 of 2009, dated 10.11.2014 on the file of the Principal District Munsif Court, Sankarankovil and set aside the same.

PRAYER in C.R.P. (MD) .No.1766 of 2015:

Petition filed under Section 115 of C.P.C., praying to call for the records relating to the fair and decreetal order made in E.P.No.3 of 2014 in O.S.No.248 of 2009, dated 13.03.2015 on the file of the Principal District Munsif Court, Sankarankovil and set aside the same.

For Petitioner in
both the petitions
For Respondent-1
in both the petitions
For Respondents 2-5
in both the petitions

: Mr.P.Subbaraj
: M.Thirunavukarasu
: Mr.H.Arumugam

**COMMON ORDER**

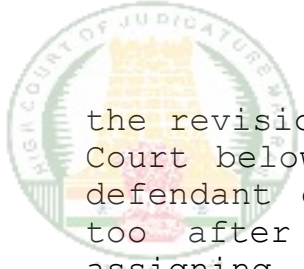
The respondent herein viz., Kallakondan Nadar @ Kallavandan Nadar as plaintiff had filed the suit in O.S.No.248 of 2009 against the revision petitioner herein / defendant for the relief of declaration and permanent injunction, and in the said suit an *ex parte* decree has been passed against the revision petitioner herein / defendant on 01.06.2010 and the respondent / plaintiff has also filed an execution petition in E.P.No.3 of 2014. While so, the revision petitioner herein / defendant has filed I.A.No.719 of 2014 seeking to condone the delay of 1367 days for taking steps to set aside the said *ex parte* decree and the said petition was dismissed by the trial Court holding that there is no valid reason assigned by the revision petitioner / defendant for condoning such enormous delay. Aggrieved by the order passed in I.A.No.719 of 2014, the revision petitioner / defendant has filed C.R.P.(MD).No.207 of 2015. During the pendency of the said revision petition, the trial Court ordered E.P.No.3 of 2014, against which C.R.P.(MD).No.1766 of 2015 has been filed by the revision petitioner / defendant.

2. The learned counsel appearing for the revision petitioner would submit that the delay of 1367 days in taking steps to set aside the *ex parte* decree was neither willful nor wanton, but the Court below, without considering the same, has dismissed I.A.No.248 of 2009, against which he has filed C.R.P.(MD).No.207 of 2015. He would further submit that the trial Court, even without considering the fact of pendency of the said revision petition, has erroneously allowed E.P.No.3 of 2014 and therefore, the orders impugned in both the civil revision petitions may be set aside and both the civil revision petitions may be allowed.

3.The learned counsel appearing for the respondent / plaintiff would submit that the revision petitioner, knowing fully well about the pendency of the suit and having purposefully left the suit in *ex parte*, has filed I.A.No.248 of 2009 with the delay of 1367 days and the same was, after detailed consideration, dismissed by the trial Court. He would further submit that in order to drag on the matter, the revision petitioner has filed C.R.P.(MD).No.248 of 2009 before this Court and this Court has not granted any interim order in favour of the revision petitioner. While so, the trial Court, after hearing both sides, has allowed E.P.No.3 of 2014 and therefore, both the orders impugned in these civil revision petitions need not be interfered with. Thus, he prayed for dismissal of both the civil revision petitions.

4. Heard the learned counsel appearing for the revision revision and the respondent / plaintiff, and perused the records carefully.

5. A perusal of the affidavit and counter affidavit filed in support of the petition in I.A.No.719 of 2014 would go to show that



the revision petitioner has purposefully failed to appear before the Court below and proceed with the suit. The revision petitioner / defendant claimed lost sight of the proceedings in the suit, that too after entering appearance before the Court below, without assigning any valid reason. The Court below, after detailed discussions, has rightly come to the conclusion that there is no valid reason assigned by the revision petitioner for condoning the delay of 1367 days in taking steps to set aside the *ex parte* decree. Further, as rightly contended by the learned counsel for the respondent / plaintiff, this Court has not granted any interim order in favour of the revision petitioner in C.R.P.(MD).No.207 of 2015 and as such, the Court below has proceeded with the execution petition and after hearing both sides, has allowed the execution petition. This Court does not find any error or infirmity in the order passed in the execution petition also.

6. In view of the above, both the civil revision petitions are dismissed. No costs. Consequently, M.P.(MD).No.1 of 2015 is dismissed and M.P.(MD).No.2 of 2015 is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Sankarankovil.

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 44188

GCG
TE/JC/SAR-1 : 20/02/2018 : 3P/3C

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