

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(NPD) No. 3515 of 2012
and
MP.No. 1 of 2012

S.Ve. Arunn

... Petitioner

Vs

1. Chandrakant J. Porwal

2. J. Udayakumar

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of CPC against the fair and decretal order of the trial Court dated 23.07.2012 made in I.A.No.4825 of 2011 in O.S.No.4712 of 2009 on the file of the VII Assistant Judge, City Civil Court, CHennai, dismissing the petition to condone the delay of 73 days in filing a petition to set aside the exparte decree.

For Petitioner : Mr. R. Priyakumar

For Respondent s : No Appearance

ORDER

The Civil Revision Petition has been filed to set aside the order passed by the learned VII Assistant Judge, City Civil Court, Chennai in I.A.No.4825 of 2011.

2. Despite notice served on the respondents and their name also printed in the cause list, none appeared on behalf of the respondents.

3. The first respondent herein has filed a suit in O.S.No.4712 of 2009 on the file of the VII Assistant City Civil Court, Chennai for recovery of money against the petitioner and the second respondent herein and the said suit was decreed on 09.09.2009. Therefore, the petitioner herein has filed a petition in I.A.No.4825 of 2011 to condone the delay of 73 days in filing a petition to set aside the exparte decree and the same was dismissed by the trial Court.

4. Heard the learned counsel for the petitioner and perused the materials available on records.

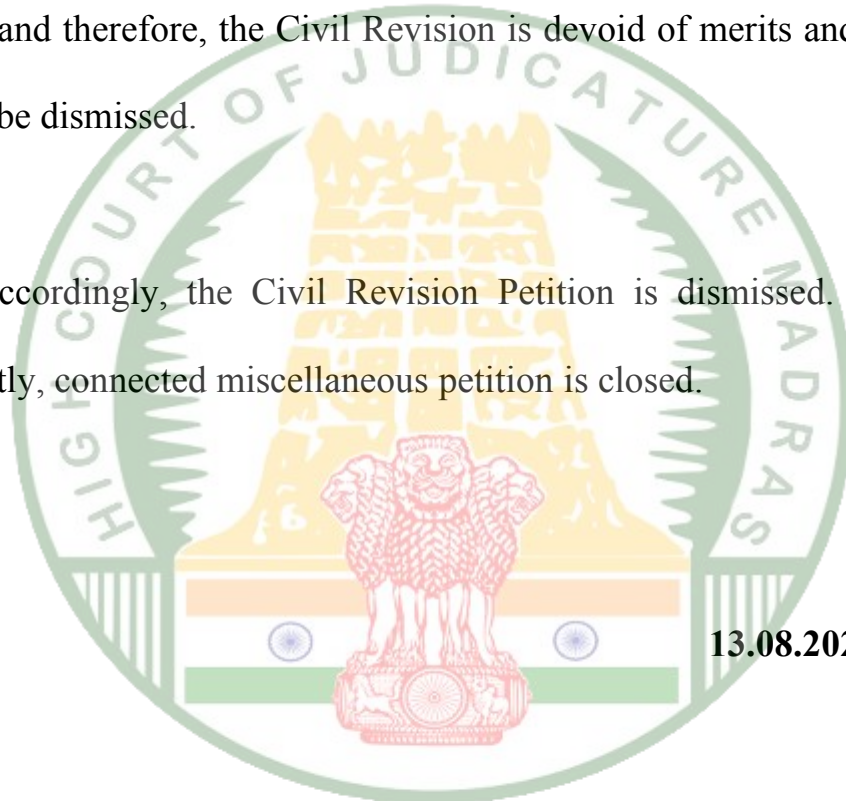
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5. The suit has been filed by the first respondent/plaintiff under Order 37 of CPC. In the said suit, summon was served on the petitioner/first defendant. However, he has not filed a petition for leave to defend within the statutory period and hence, the petitioner was called absent and set exparte and exparte decree was passed on 09.09.2009. Therefore, the petitioner has filed a petition in I.A.No.4825 of 2009 under Section 5 of the Limitation Act to set aside the exparte decree and the same was dismissed by the trial Court. Challenging the same, the present revision has been filed.

6. Since the suit has been filed under Order 37 Rule (1) C.P.C, petition for leave to defend has to be filed within a period of 30 days from the date of service of summon. However, the petitioner has not filed petition for leave to defend the suit in time even after receipt of summons. Therefore, the trial Court decreed the suit. Thereafter, the petition filed by the petitioner to condone the delay was dismissed by the trial Court on the ground that no documentary evidence has been produced to prove the reasons mentioned by the petitioner for condoning the delay.

7. From a careful reading of the petition, it could be seen that the petitioner has not proved the reasons stated for the delay in the affidavit and therefore, this Court does not find any perversity in the order passed by the trial Court and therefore, the Civil Revision is devoid of merits and the same is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



13.08.2020

mrp

To

1. The VII Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras

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C.R.P.NPD. No. 3515 of 2012

P.VELMURUGAN,J.

mrp



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