

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2694 of 2016

and

CMP.Nos.13954 of 2016 & 6343 of 2019

Neppolian

... Petitioner

Vs.

1.Suba

2.K.M.Sharfudin

3.Haridoss

... Respondents

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order passed in I.A.No.658 of 2015 in M.C.O.P.No.93 of 2011 dated 21.03.2016 on the file of the Principal District Court, Ariyalur.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.S.Kamadevan [R1]

R2 & R3 -No appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has arisen out of the order of dismissal dated 21.03.2016 passed by the learned Principal District Judge, Ariyalur in I.A.No.658/2015 in MCOP.No.93/2011.

2. The petitioner is the 2nd respondent in the Original Petition. The 1st respondent is the claimant and he has filed the MCOP for compensation. An *ex parte* award has been passed in the Original Petition on 21.03.2012. After the delay of 1290 days, the petitioner who was the 2nd respondent in the Original Petition, has filed the petition to set aside the *ex parte* award, along with the petition to condone the delay in filing the same. It is alleged by the petitioner since notice was not served on him he could not appear during the proceedings and he came to know about the proceedings only when he received the notice in the execution petition. The 1st respondent who is the claimant has resisted the petition by stating that the petitioner had wantonly evaded the notices on some pretext or other. And now he filed this petition after an inordinate delay just to drag on the proceedings. After hearing both side parties' arguments and considering the materials on record, the court below has dismissed the petition filed to condone the delay. Aggrieved over that, the petitioner has filed this revision.

3. When the learned counsel for the petitioner contended that no constructive effort has been taken to serve the notice on him and the 1st effectively, the learned counsel for the 1st respondent/ Claimant submitted that despite repeated notices were sent to the address of the petitioner, he evaded to receive.

4. On perusal of the records and the order of the learned Principal District Judge, Ariyalur, it is seen that he has elaborated the details of dates during which the notices have been ordered to be sent to the petitioner and which were not received by him. It is not the contention of the petitioner that he had shifted his residence to any new place during the pendency of the proceedings.

5. The learned counsel for the 1st respondent submitted that the petitioner continues to reside in the same address and the said fact was not denied by the petitioner. In that case, it cannot be believed that none of the notices sent to the petitioner to his same address were not reached him.

6. It is pertinent to note that during one occasion, , taking into account of the transfer of the case to Ariyalur from Perambalur after the district bifurcation, the Court itself has taken the initiative to send notices to the parties. Even during that time the petitioner cannot say that he did not receive the notice. So it cannot be said that the 1st respondent had wantonly chosen the substituted service through paper publication without taking any efforts to send notice on the petitioner.

7. The learned Principal District Judge has observed that this petition has been filed by the 1st respondent/ Claimant for compensation in the year 1994, when he

was 3 ½ years old. At the time, when this impugned order was passed, the 1st respondent was 25 years old. The conduct of the 2nd respondent would show that he has done everything to his level best to protract the proceedings.

8. Under such circumstances, it is right for the trial Judge to dismiss the petition by not accepting the lame reasons stated by the petitioner. As I do not find any factual or legal infirmity in the order passed by the Tribunal, the order passed by the learned Principal District Judge, Ariyalur does not warrant any interference.

In the result, this Civil revision Petition stands **dismissed** and the order of the learned Principal District, Judge Ariyalur passed in I.A.No.658/2015 in MCOP.No.93/2011 is confirmed. No costs. Connected miscellaneous petition if any is also closed.

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22.06.2021

Speaking/Non-speaking
Index : Yes/No Internet : Yes/No
jrs

To

1. The Principal District Court,
Ariyalur.

2. The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

Jrs



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