



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (NPD) No.2293 of 2022

S.Nanda Kishore

...

Petitioner /
Plaintiff

versus

Dilip Kumar Jain @ Dilip Jain

...

Respondent /
2nd Defendant

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 26.09.2018 made in I.A.No.331 of 2015 in O.S.No.40 of 2011 on the file of the learned Subordinate Judge, Maduranthakam and allow this petition.

For Petitioners : Mr.M.S.Subramanian

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Subordinate Judge, Maduranthakam dated 26.09.2018 made in I.A.No.331 of 2015 in O.S.No.40 of 2011.



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2. The revision petitioner is the plaintiff who has filed the suit in O.S.No.40 of 2011 against the defendants for specific performance; the suit was set *ex parte* on 09.10.2012; thereafter, the second defendant has filed a petition to condone the delay of 1001 days in setting aside the *ex parte* decree and the same was allowed. Aggrieved over that, the plaintiff has filed the present Civil Revision Petition.

3. The learned counsel for the revision petitioner submitted that the respondent has allowed himself to set *ex parte* wantonly knowing pretty well about the proceedings of the case. He has not stated any reasons to condone the delay for setting aside the *ex parte* decree. Even the learned trial Judge has made an observation that the reasons stated by the respondent is not acceptable but reliable; if the reason is not acceptable it cannot be reliable also; since the respondent had abused the process of Court by remaining ideal for nearly three years and then knocked the doors of the Court, the petition ought to have been dismissed.



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4. The records would show that the *ex parte* decree has been passed as early as on 09.10.2012. The respondent did not take any steps for three years for filing any petition to set aside the *ex parte* decree. After three years he has filed the petition under Section 5 of the Limitation Act to condone the delay of 1001 days in setting aside the *ex parte* decree. The petitioner has stated that he came to know about the *ex parte* decree only in the year 2015. He has further alleged that he was advised by his counsel that he need not appear before the Court for all the hearings and he would inform him when the necessity comes and hence he remained silent.

5. The learned trial Judge has dealt the merits of the petition at length but at the end made an observation that though the reason is not acceptable but reliable. The reason cannot be acceptable because the respondent should not have remained careless without following the case proceedings diligently. But it could be true that he had approached his counsel at a belated stage and came to know about the passing of final decree in the year 2015.



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6. Even though the reasons stated by the petitioner is below satisfactory, the learned trial Judge thought it fit to give an opportunity to contest the matter on merits. However the petition filed to set aside the *ex parte* decree has not yet been taken on file and it is still pending. Whatever contentions the revision petitioner wishes to make in this petition can also be made as objection in the other petition also. Since the further proceedings should be allowed to go on, I feel the order of the learned trial Judge should not be interfered.

7. In view of the above stated reasons, this Civil Revision Petition is dismissed and the order dated 26.09.2018 passed by the learned Subordinate Judge, Maduranthakam in I.A.No.331 of 2015 in O.S.No.40 of 2011 is hereby confirmed. No costs.

29.07.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri



To

The Subordinate Judge, Maduranthakam.

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R.N.MANJULA, J.

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