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Jayaraman Vs. Senthil Kumar

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Court : Chennai Madurai

Decided On : Oct-24-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(PD)(MD)No. 2126 of 2016 & C.M.P(MD)No. 9985 of 2016

Appellant : Jayaraman

Respondent : Senthil Kumar

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, praying this Court to call for the records relating to the fair and decretal order made in I.A.No.929 of 2011 in O.S.No.73 of 2010, dated 16.4.2012, on the file of the Principal District Munsif Court, Dindigul and to set aside the same.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order made in I.A.No.929 of 2011 in O.S.No.73 of 2010, dated 16.04.2012, on the file of the Principal District Munsif Court, Dindigul

2. According to the Petitioner that the respondent herein filed a suit in O.S.No.73 of 2010 before the Principal District Munsif Court, Dindigul for recovery of money against the revision petitioner. In the said suit, the Petitioner herein was set ex-parte and an ex-parte decree was passed by the Principal District Munsif Court, Dindigul Due to his illness, the revision petition was not able to appear before the Court and hence the suit was set ex-parte. Thereafter, the revision petitioner filed

the present application to condone the delay of 452 days in filing the petition to set aside the ex-parte decree passed in the aforesaid suit. The said application was dismissed. Against that the revision Petitioner has filed the present Civil Revision Petition before this Court.

3. According to the Petitioner, the respondent filed E.P.No.72 of 2011 in O.S.No.73 of 2010 before the Principal District Munsif Court, Dindigul. During the pendency of the said proceedings, the revision petitioner has deposited a sum of Rs.5,000/- before the trial Court. The suit is for recovery of a sum of Rs.8,808/ against the revision petitioner. According to the Petitioner, the respondent gave an assurance that they will withdraw the above suit and believing the above assurance, the revision petitioner has not filed any application to set aside the ex-parte decree passed in the above suit immediately. Therefore the delay caused in filing the application to set aside the exparte decree is neither wilful nor wanton, but due to the above said reason.

4. Per contra, the learned counsel for the respondent would submit that the said decree was passed on 18.06.2010. In the above said suit,the petitioner herein has also filed the written statement before the trial Court. The Petitioner has not explained sufficient reason to condone the delay of 542 days in filing the application to set aside the ex-parte decree passed in the above suit. Hence the learned counsel for the respondent prays for dismissal of the Civil Revision Petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The respondent herein filed a suit in O.S.No.73 of 2010 before the Principal District Munsif Court, Dindigul for recovery of a sum of Rs.8,808/- from the revision petitioner. On receipt of summons, the revision petitioner was not able to appear before the trial Court due to his illness and hence he was set ex-parte and an exparte decree was passed by the trial Court. According to the revision Petitioner, it is stated that the respondent has given an assurance that he will not prosecute the suit against the revision petitioner and try to settle the matter with the help of outsiders and believing the above said assurance, the Petitioner could not file the

application immediately. Thereafter, after filing of E.P by the respondent, the Petitioner has filed the present application to condone the delay of 542 days in filing the application to set aside the ex-parte decree. For that also, the Petitioner has submitted that, after receipt of summons in the suit, due to illness, he has not appeared before the trial Court. The petitioner has also submitted that pending E.P., the Petitioner has deposited a sum of Rs.5,000/- before the trial Court. Therefore no prejudice would be caused to the respondent if the said application is allowed. Considering the relief sought for in the suit as well as the fact that written statement was filed by the revision petitioner and to decide the suit on merits and in the light of the decision of the Honourable Apex Court reported in 2013(5) LW Page 20,in the case of Esther Bhattacharjee .vs. Managing Committee of Raghunathapur Nafar Academy and others and following the above decision and this Court considering the liberal approach in condoning the delay, hence, the order passed by the trial Court is liable to be set aside. Hence,I am inclined to interfere with the order passed by the trial Court in dismissing the Petition to condone the delay.

7. In the facts and circumstances of the case, the order made in I.A.No.929 of 2011 in O.S.No.73 of 2010, dated 16.04.2012, on the file of the Principal District Munsif Court, Dindigul is set aside and delay of 542 days in filing the application to set aside the exparte decree passed in the above suit is condoned on condition that the petitioner pays a sum of Rs.1,500/- to the respondent herein towards cost within a period of four weeks from the date of receipt of a copy of this order, failing which, this order will stand automatically dismissed without further reference to this Court. In the event of compliance of the above condition, the Principal District Munsif, Dindigul is directed to number the application filed under Order 9 Rule 13 C.P.C, if it is in order, and to pass appropriate orders thereafter. The trial Court is further directed to dispose of the suit as early as possible, preferably within a period of six months thereafter.

8. With the above directions, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

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