

B. Hashim Vs. S. Abitha

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Court : Chennai

Decided On : Oct-19-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD).No. 367 of 2014 & M.P.No. 1 of 2014

Appellant : B. Hashim

Respondent : S. Abitha

Judgement :

(Prayer: Civil Revision Petition under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 19.08.2013 passed in I.A.No.18464 of 2010 in O.S.No.1300 of 2007 on the file of the V Assistant Judge, City Civil Court, Chennai.)

1. Challenging the fair and final order passed in I.A.No.18464 of 2010 in O.S.No.1300 of 2007 on the file of the V Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.
2. The respondent/plaintiff filed the suit in O.S.No.1300 of 2007 for recovery of possession and to return the original document in Document No.1948/1985 in respect of the suit property.
3. Since the defendants failed to appear before the trial Court, the trial Court set them exparte and an exparte decree was passed on 20.06.2007. Pursuant to the

decree passed in O.S.No.1300 of 2007, the plaintiff filed an Execution Petition in E.P.No.3715 of 2007. Before the Executing Court, the 2nd defendant entered appearance through her counsel Mr.S.N.Narasimhulu and the said counsel undertook to file vakalat on behalf of the 1st defendant (who is the revision petitioner herein) on 19.02.2009.

4. When the matter came up on 17.10.2016, Mr.S.N.Narasimhulu, the learned counsel appearing for the revision petitioner/1st defendant submitted that he has not given undertaking to file vakalat on behalf of the 1st defendant in the Execution Petition in E.P.No.3715 of 2007 and the observation made by the trial Court in the impugned order is not correct. However, Mr.V.Lakshminarayanan, the learned counsel appearing for the respondent/plaintiff submitted that the counsel had undertaken to file vakalat on behalf of the 1st defendant/revision petitioner before the Executing Court on 19.02.2009. Therefore, the matter was adjourned to today (i.e.) 19.10.2016 and on verification, Mr.S.N.Narasimhulu, learned counsel appearing for the petitioner submitted that he undertook to file vakalat on behalf of the 1st defendant/revision petitioner in the Execution Petition. Mr.V.Lakshminarayanan, the learned counsel appearing for the respondent also produced typed set of papers enclosing the docket orders passed by the Executing Court in E.P.No.3715 of 2007.

5. On a perusal of the same, it is clear that the counsel, who is appearing in this Civil Revision Petition on behalf of the petitioner, has undertaken to file vakalat on behalf of the 1st defendant before the Executing Court and has also affixed his signature on 19.02.2009.

6. Subsequently, the 1st defendant filed an application in I.A.No.18464 of 2010 to condone the delay of 951 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the 1st defendant has stated that the summons were not served on him and that he was staying abroad at the time of sending summons to him and also stated that he had returned to India only on 10.03.2010. Further, he has stated that he was not aware of the exparte decree passed in the suit. Hence, there is a delay of 951 days in filing the application to set aside the exparte decree.

7. When the counsel for the petitioner had undertaken to file vakalat in the Execution Petition in E.P.No.3715 of 2007 on behalf of the revision petitioner on 19.02.2009 itself, the reason given by the 1st respondent that he was not aware of the exparte decree passed by the trial Court cannot be believed. The trial Court rightly disbelieved the averments stated in the affidavit filed in support of the petition. From the docket entries made in E.P.No.3715 of 2007, it is clear that the revision petitioner had knowledge about the exparte decree in the suit at least on 19.02.2009. However, the present application has been filed only on 23.03.2010. Since the petitioner has not explained the reasons for the delay in an acceptable manner, the trial Court has rightly dismissed the petition.

8. It is settled position that unless the party seeking for condonation of the delay shows sufficient cause for the delay, the delay should not be condoned.

9. The averments stated in the affidavit filed in support of the petition are only false averments invented for the purpose of maintaining the application. The trial Court, taking note of all these aspects, rightly dismissed the application.

10. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

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