

Rajendran Vs. Sports Development Authority Tamil Nadu, represented by District Sports Officer

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Court : Chennai Madurai

Decided On : Mar-14-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.R.P(MD)No. 1952 of 2015 & M.P.(MD).Nos. 2 & 3 of 2015

Appellant : Rajendran

Respondent : Sports Development Authority Tamil Nadu, represented by District Sports Officer

Judgement :

(Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 24.08.2015, made in E.P.No.103 of 2013 in O.S.No.131 of 2006, on the file of the Sub Judge.)

This Civil Revision Petition is filed, against the fair and decretal order, dated 24.08.2015, made in E.P.No.103 of 2013 in O.S.No.131 of 2006, on the file of the Sub Judge.

2. The petitioner is the defendant in O.S.No.131 of 2006 and respondent in E.P.No.103 of 2013. The respondent filed Suit in O.S.No.131 of 2006 for a judgment and decree directing the petitioner to put the respondent in vacant possession of schedule property and to pay a sum of Rs.5,000/- per month till

delivery of possession. An ex-parte decree was passed in the Suit on 09.10.2007. The petitioner came to know of the ex-parte decree only on 20.04.2012, when the respondent directed the petitioner to vacate on 20.04.2012 and hand over the possession and meet the police. The petitioner filed application to set aside the ex-parte decree, dated 09.10.2007, along with the application to condone the delay of 1628 days of delay in filing the petition, to set aside the ex-parte decree. The said petition was not numbered and according to the petitioner, the said application was misplaced and that he has filed application to reconstruct the said application and then it was numbered recently.

3. The respondent filed E.P.No.103 of 2013 to evict the petitioner from suit properties and deliver vacant possession. The petitioner filed counter affidavit and contended that in view of application to condone delay and set aside ex-parte decree are pending and the petitioner is carrying on a Hotel Business and if evicted, he will be put to irreparable loss and hardship and prayed for dismissal of E.P.103 of 2013. The petitioner also filed an application to stay the execution proceedings for a period of six months. The said application was returned for want of court fee stamps.

4. The learned Judge considering the facts and materials on record and the fact that the petitioner has not furnished the I.A. number for condoning the delay and contention of the respondent that rent was not paid, rejected the contention of the petitioner and allowed the E.P.No.103 of 2013. Against that order, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner contended that,

(1) the learned Judge erred in ordering delivery without any valid and acceptable reason,

(2) the learned Judge failed to see application to condone delay was filed on 24.04.2012 and entry at Survey No.4009 was made in CR-19 Register. The said application has been mis-placed. The petitioner has filed petition to re-constitute the said application.

(3) the learned Judge erred in holding that the petitioner has not taken any steps to set aside the ex-parte decree. No notice in the suit was served on the petitioner in the suit. The petitioner came to know of the ex-parte decree in the year 2012 and immediately he filed application to condone delay. The respondent filed EP only in the year 2012.

(4) the petitioner is running a Hotel in the suit property and without giving an opportunity to contest the suit on merits cannot be thrown out based on ex-parte decree.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appeared for the respondent and perused the materials available on record.

7. From the materials it is seen that the respondent filed O.S.No.131 of 2006 to evict the petitioner from the suit premises on the ground of default in payment of rent. An ex-parte decree was passed on 09.10.2007. According to the petitioner, he came to know of the ex-parte decree only on 20.04.2012, when the respondent issued notice to him and immediately, he filed an application on 20.04.2012, to set aside the ex-parte decree, along with application to condone the delay of 1628 days of delay in filing the petition, to set aside the ex-parte decree, dated 09.10.2007. It is seen that the said petition was not numbered and now, according to the petitioner, the said application was misplaced and that he has filed application to reconstruct the said application and then it was numbered recently. The petitioner was not vigilant enough to pursue his remedy and from 20.04.2012, he has not taken any steps to get the application numbered in time and get order in his favour. It is pertinent to note that the petitioner filed O.S.No.224 of 2001 and injunction has been granted in his favour. He also filed M.P.(MD).No.1 of 2012 in W.P.(MD).No.7162 of 2012, to stay the operation of the impugned notice dated 20.04.2012 and this Court by order dated 30.05.2012, has granted interim stay in that petition. The petitioner has suppressed all the material facts in that writ petition. A detailed counter along with vacate stay petition has been filed by the respondent in the said writ petition and the same is pending before this Court. Having taken these legal proceedings, the petitioner ought to have taken steps to

get the application numbered, to condone the delay and pursued the matter. The petitioner has not denied the contention of the respondent that the petitioner is not paying rent and huge arrears of rent is due and payable by him.

8. The learned Judge considered all these facts in proper perspective and the fact that the petitioner did not pursue the application to condone the delay and this Court granted liberty to the respondent to file execution proceedings for taking possession from the petitioner and allowed the execution petition. The learned judge has exercised his power properly and the order of the learned Judge does not suffer from any infirmity, irregularity or illegality, warranting interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

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