

Saminathan Vs. Annasamy ...

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Court : Chennai

Decided On : Jun-25-2010

Judge : G.Rajasuria, J.

Appeal No. : C.R.P.(NPD).No.1116 of 2010 and M.P.No.1 of 2010

Appellant : Saminathan

Respondent : Annasamy ...

Advocate for Def. : Mr.P.Valliappan, Adv.

Advocate for Pet/Ap. : Mr.C.Prabakaran, Adv.

Judgement :

1. Inveighing the order dated 4.8.2009 passed in I.A.No.304 of 2008 in O.S.No.267 of 2006 by the Principal District Munsif, Ariyalur, this civil revision petition is focussed.
2. Heard both sides.
3. Broadly but briefly, narratively but precisely the relevant facts absolutely necessary and germane for the disposal of this revision would run thus: (i) The respondent, as plaintiff, filed the suit for recovery of a sum of Rs.79,275.00 with interest in the Principal District Munsif, Ariyalur. The revision petitioner/defendant remained ex-parte. Thereafter he has chosen to file the I.A.No.304 of 2008 to get the delay of 229 days condoned in filing the application to get the ex-parte decree

set aside. The trial Court dismissed the said application, as against which, this revision has been filed on various grounds, the quintessence of the same would run thus: The lower Court failed to take into account the genuine reasons stated by the revision petitioner/defendant to get the delay condoned. In fact, the defendant was suffering from Jaundice and hence he could not participate in the proceedings by filing written statement etc.

4. The learned counsel for the revision petitioner/defendant reiterating the grounds of revision would develop his argument that a lenient view could have been taken by the lower Court as the delay was not enormous and the defendant is having a good case to put forth during trial.

5. Whereas the learned counsel for the respondent/plaintiff, by inviting the attention of this Court to the earlier order passed by this Court on 23.03.2010 would submit forcibly and vehemently that the revision petitioner/defendant had not chosen to even respect this Court's Order by depositing the sum of Rs.30000/- (rupees thirty thousand) in the lower Court to show his bona fides and in such a case he deserves no sympathy and the delay also cannot be condoned.

6. The point for consideration is as to whether the delay of 229 days in filing the application to get the ex-parte decree set aside could be condoned or not?

7. At the out set itself I would like to point out that the delay of 229 days even though not enormous and in the meantime not to be treated as insignificant, yet the conduct of the defendant should necessarily be seen.

8. My learned predecessor vide order dated 23.3.2010, by way of giving one opportunity to the petitioner/defendant to show his bona fides ordered that a sum of Rs.30000/- should be deposited in the lower Court. Such an order was passed presumably with the avowed object to see as to how far the revision petitioner/defendant was willing to make use of the opportunity, if any, that would be given in future by condoning the delay. To the great shock and surprise of this Court even though the said order was passed on 23.3.2010 granting six weeks time for compliance, the revision petitioner/defendant has not chosen to comply with that, despite lapse of three months as of now. As such, this clearly smacks

the defendant's negligence and also disinclination to prosecute the matter diligently. In such a case I could see considerable force in the submission made by the learned counsel for the respondent/plaintiff that the revision petitioner/defendant is bent upon protracting the proceedings. The suit itself is only for recovery of Rs.79,275.00 with interest based on a pro-note and in such a case if too much indulgence is shown in further granting time then it would become counterproductive in the process of dispensing justice and it may not be in the interest of justice also.

9. The lower Court also in its order felt that the reason as found set out in the affidavit accompanying the petition was not genuine. The lower Court clearly pointed out that the Attendance Register would reveal that the defendant was attending the work in the Treasury Office during the relevant period. Hence, considering all these facts I do not think that this is a fit case for interfering with the order of the lower Court. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

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