

Pechiammal Vs. Subramani

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Court : Chennai

Decided On : Jun-27-2012

Judge : G.Rajasuria, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Order 9 Rule 13, Section 115

Appeal No. : C.R.P.(NPD).No.2132 of 2012

Appellant : Pechiammal

Respondent : Subramani

Advocate for Pet/Ap. : Mr.M.Guruprasad, Adv

Judgement :

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 02.04.2012 made in I.A.No.720 of 2011 in O.S.No.212 of 2005 on the file of the District Munsif, Dharapuram.

ORDER

1. Animadverting upon the order dated 02.04.2012 passed in I.A.No.720 of 2011 in O.S.No.212 of 2005 by the learned District Munsif, Dharapuram, this civil revision petition is focussed.

2. At the entertaining stage itself, heard the learned counsel for the petitioner.

3. A summation and summarisation of the germane facts in a few broad strokes could be encapsulated thus:

The revision petitioner/plaintiff filed the suit for declaration and permanent injunction in respect of an immovable property. After service of summons, the defendant entered appearance, but failed to file the written statement and thereafter, he remained ex parte; whereupon, the ex parte decree was passed. Subsequently, he filed an application under Order IX Rule 13 of CPC within time, however it was returned for carrying out certain corrections. But it was not re-presented in time, whereupon an application was filed to get the delay of 715 days condoned in re-presenting such application under Order IX Rule 13 of CPC. The lower Court after hearing both sides, condoned the delay, subject to payment of Rs.750/- (Rupees seven hundred and fifty only).

4. Being aggrieved by and dissatisfied with the same, this revision is focussed on various grounds.

5. The learned counsel for the petitioner placing reliance on the grounds of revision, would submit that there was enormous delay, but the lower Court simply took a lenient view and condoned the delay of 715 days in re-presenting the I.A.

6. Trite, the proposition of law, is that once the lower Court decided to give an opportunity to the party concerned to participate in the proceedings and that too in a title suit, the High Court would be reluctant to interfere. Here in time, i.e., within the limitation period, the application under Order IX Rule 13 of CPC was filed; however there was delay of 715 days in re-presenting such application, which was condoned on the ground that the said bundle got mixed up in the Advocate office. However, the lower Court also passed a remark as against such reason attributed. Further by taking a lenient view, with an intention to give opportunity to the defendant to participate in the proceedings, the lower Court condoned the delay, warranting no interference in the revision. Hence I could see no perversity or illegality in the order passed by the lower Court. Accordingly, this civil revision petition is disposed of. No costs.

7. In the event of the application filed under Order IX Rule 13 of CPC application being allowed, the lower Court shall do well to see that the matter is disposed of within a period of three months thereafter.

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