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CRP NO.603 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 09 / 12 / 2025

ORDER PRONOUNCED ON : 06 / 01 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

C.R.P.NO.603 OF 2023

Mr. Rajarajan

...Petitioner/Petitioner/Plaintiff

Vs.

1.Mr. K.P. Selvam

2.Mr. Chandra

3.The Branch Manager,
Salem Central Co-operative Bank Limited,
Thammampatti Post,
Gengavalli Taluk,
Salem District.

4.Mr. Subbarayan

5.Mr. Arumugam

6.Mr. Perumal

7. Mr. K.A.Kaliyan

8. Mr. Selvarasu

...Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated November 30, 2022 passed in I.A.No.216 of 2016 in O.S.No.91 of 2011 on the file of the Subordinate Court, Attur.

For Petitioners : Ms. Anvitha.R
for Ms.V.Srimathi



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For Respondents : Mr.K.Arunbabu for Respondent No.4
Mr.A.Sriram for Respondent No.7
Not ready in notice for Respondent No.2
Respondent Nos.1, 3, 5 and 6 served -
No appearance

ORDER

Feeling aggrieved by the Fair and Decreetal Order dated November 30, 2022 passed in I.A.No.216 of 2016 in O.S.No.91 of 2011 on the file of the 'Subordinate Court, Attur,' (hereinafter referred to as the 'Trial Court'), the Petitioner therein has filed this Civil Revision Petition under Article 227 of the Constitution of India.

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3.The Plaintiff filed the Original Suit against the Defendants seeking the relief of declaration of certain documents as null and void, permanent injunction and also seeking an alternative relief of Partition and separate possession.



4.The Suit was filed in the year 2011. When the Suit was posted on July 27, 2016 for the appearance of the Plaintiff, the Plaintiff failed to appear before the Trial Court and conduct the case and hence, the suit was dismissed for default on July 27, 2016. Thereafter, the Plaintiff filed a petition under Order IX Rule 9 of the 'Code of Civil Procedure, 1908' ('CPC' for short) to set aside the dismissal order and to restore the Suit on file, in I.A.No.216 of 2016. After hearing both sides, the Trial Court passed a conditional order dated November 30, 2022 stating that the Interlocutory Application is allowed subject to payment of costs of Rs.1,000/- payable by the Plaintiff to the 6th Defendant before December 9, 2022, failing which, the petition shall be dismissed. The Plaintiff did not comply with the conditional order passed by the Trial Court. Hence, the said Interlocutory Application stood dismissed.

5.Feeing aggrieved by the Fair and Decretal Order dated November 30, 2022, the Plaintiff has filed this Civil Revision Petition.

6.Ms.R.Anvitha, representing Ms.V.Srimathi, learned counsel on record for the Revision Petitioner submits that the Advocate of the Petitioner / Plaintiff before the Trial Court failed to take note of the Order passed by the Trial Court and convey the same to the Plaintiff. Hence, the Plaintiff could not comply with the conditional order. The Plaintiff has no



deliberate or willful intention to cause any delay in the proceedings or disobey the order of the Court. The Plaintiff is ready to deposit the said amount as may be directed by this Court. Accordingly, she prayed to set aside the order of the Trial Court.

7.*Per contra*, Mr.K.Arunbabu, learned counsel appearing for the 4th Respondent and Mr.A.Sriram, learned counsel appearing for the 7th Respondent submit that the order under challenge is an appealable Order under Order XLIII Rule 1(c) of CPC. Hence, the present Civil Revision Petition is not maintainable. They submit that the suit was filed in the year 2011 and that, with a view to harass the Defendants 3 to 8, the Plaintiff wantonly allowed the suit to be dismissed for default and thereafter filed a petition for restoration, only with an intention to delay the proceedings and to secure unlawful enrichment. The learned Counsels further submit that the Trial Court dismissed the petition on November 30, 2022, but the Plaintiff filed Copy Application only on January 05, 2023 and no reason was assigned for the same. The Certified Copy of the Order made in the Interlocutory Application was delivered on January 30, 2023, but the revision was filed on February 28, 2023. This itself shows the plaintiff's intention to prolong the proceedings and cause hardship to the Defendants. The conduct of the Plaintiff is not *bona fide*. Therefore, the learned



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Counsels appearing for the Respondents 4 and 7 pray that this Civil Revision Petition be dismissed.

8.This Court has considered the submissions made by both sides and perused the records.

9.The Suit was dismissed for default on July 27, 2016. The restoration petition was filed by the Plaintiff on August 11, 2016 and the same was returned for curing some defects. After curing the defects, the plaintiff re-presented the same on December 17, 2017 and the same was numbered on April 27, 2018. Sixth Respondent filed counter on January 8, 2020. Thereafter, due to Covid - 19 Pandemic, the matter saw various adjournments. On November 14, 2022, both sides' arguments were heard and the matter was posted on November 30, 2022 for orders. The operative portion of the fair order dated November 30, 2022 passed by the Trial Court in the Interlocutory Application reads thus:

'முடிவில் மனுதாரர் 6ம் எதிர்மனுதாரருக்கு ரூ.1,000/- செலவுத் தொகையாக நேரடியாக வரும் 09.12.2022க்குள் செலுத்த வேண்டுமென்றும், அவ்வாறு செலுத்தினால் மனு அனுமதிக்கப்படும் என்றும் தவறும் பட்சத்தில் இம்மனு தள்ளுபடி செய்யப்படும் என்ற நிபந்தனையுடன்



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தீர்மானிக்கப்படுகிறது.'

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9.1. Operative portion of the decreetal order passed by the Trial Court in the Interlocutory Application reads thus:

'1) மனுதாரர் 6ம் எதிர்மனுதாரருக்கு ரூ.1,000/-ஐ செலவுத் தொகையாக நேரடியாக வரும் 09.12.2022க்குள் செலுத்த வேண்டுமென்றும் அவ்வாறு செலுத்தினால் மனு அனுமதிக்கப்படும் என்றும், தவறும் பட்சத்தில் இம்மனு தள்ளுபடி செய்யப்படும் என்ற நிபந்தனையுடன் தீர்மானிக்கப்படுவதாக 30.11.2022 அன்று உத்தரவிடப்பட்டுள்ளது.

2) 09.12.2022 அன்று மனுதாரர் செலவுத் தொகையை செலுத்தவில்லை என்பதாலும், மனுதாரர் அழைத்து ஆஜராகவில்லை என்பதாலும் இந்த மனு தள்ளுபடி செய்யப்படுகிறது.

30.11.2022ம் நாளாகிய இன்று என் கையெழுத்தும், இந்நீதிமன்ற முத்திரையும் போட்டுக் கொடுக்கப்பட்டது.'

10. As it could be seen from the above extracts, the order of payment of cost and the order of dismissal on failure thereof, form part of the same order. If the plaintiff fails to comply with the condition of



payment of cost, the Interlocutory Application would stand dismissed automatically without any further direction or interference from the Court.

As per Order XLIII Rule 1 (c) of the CPC, if an Application under Order IX Rule 9 of CPC is rejected, appeal would lie. Thus appeal remedy is provided under CPC for dismissal of an Application under Order IX Rule 9 of CPC and hence, as per Section 115 (2) of CPC, no revision would lie. No doubt that revision is normally permissible over order of payment of cost. But in this case, the Order IX Rule 9 Application would automatically stand dismissed on the plaintiff's failure to comply with the condition of payment of cost within the prescribed time limit. The order for payment of cost and the order of dismissal constitute a single order and they cannot be severed, making the order under challenge an appealable order under Order XLIII Rule 1 (c) of CPC and not a revisionable one under Section 115 of CPC. The said view is fortified by two decisions of this Court, the earliest being ***Chintakayala Ramayya -vs- Mithinti Lakshmayya*** reported in ***AIR 1944 Mad 383 = (57) L.W. 292***. For easy appreciation of the facts of *Chintakayala Ramayya's* case, the order under challenge therein dated July 5, 1943 is reproduced hereunder:

Operative Portion of the Judgment therein:

"On the whole, I should think that the suits should be restored and sufficient costs should be awarded to the respondents as a panacea as was done by His Lordship in the Case quoted



above, *Venkateswara Rao v. Subramaniam* (1939) 2 M.L.J. 611 =50 L.W.430. I therefore order the petitioner to pay Rs. 100 for costs of the respondents irrespective of the result in the suits within 15 days from this date. They shall also deposit costs of the suits as a condition precedent before the trial of the suits which are hereby restored to file and posted peremptorily to the 26th July 1943. In default, the petitions will stand dismissed with costs."

Decreetal Order therein:

"It is ordered that the petition be and the same is hereby allowed. It is further ordered that the petitioners do deposit into Court a sum of Rs. 100 towards their costs in this petition and also I.A. Nos. 569, 570 and 625 to 627 of 1943 irrespective of the result of the suits and do also deposit the costs decreed on or before 26th July 1943. It is further ordered that in default of payment the petitions do stand dismissed with costs."

11. Bare reading of the above extracts would make it clear that the order under challenge in ***Chintakayala Ramayya's Case*** is similar and comparable to the order under challenge in the case on hand. In ***Chintakayala Ramayya's Case***, an appeal was preferred over the said order and a preliminary objection was raised that only revision would lie. This Court overruled the same and held that only appeal would lie as the order of dismissal and the order of payment of cost form a single order.

12. The another decision is ***Devaki alias Devi -vs- S.Vani*** reported in ***2002 – 1 – L.W. – 345***, wherein it was held as hereunder:



“It is thus explicit from the decisions referred to above that under Order 43 Rule 1(d) the conditional order passed by the court in the application filed under Order 9 Rule 13, C.P.C. is an appealable order. It is also seen from the above decisions that if the Court imposes certain conditions to be complied with before the stipulated date and the consequence of such non-compliance is stated in the very order itself, then it would be a final order. In this case, it is specifically stated in the order that the application would stand dismissed if the amount is not deposited within the stipulated date. Therefore, I have no hesitation in holding that the order passed by the trial court in this case is an order which falls under Order 43 Rule 1(d) of C.P.C. and that the remedy of the aggrieved party is only to file an appeal and not a revision.”

13. Though the aforecited cases arise out of dismissal of Order IX Rule 13 Applications and the case on hand deals with a dismissal order of an Order IX Rule 9 Application, the legal principle laid down in the aforecited case laws can very well be applied to the present case. From the aforecited case laws, the legal position is clear that when the order of dismissal is subject to payment of cost and when the dismissal is automatic in case of failure thereof without any need for further direction or interference from the Court, they form a single order and consequently, only appeal would lie over the same and no revision would lie. As stated *supra*, in the case on hand, the order of the Trial Court is such that the Interlocutory Application would stand dismissed automatically if the plaintiff fails to comply with the condition of payment of cost. In other



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words, in case of failure in payment of cost by the plaintiff, the

Interlocutory Application would stand dismissed without any reference to or interference from the Court. The fair and decretal order dated November 30, 2022 under challenge is the single and only order, and no further order was necessary, nor passed. The docket order dated December 9, 2022 is a mere formal recording of the factum of dismissal vide the earlier order which is the fair and decretal order dated November 30, 2022. Hence, no revision would lie over the fair and decretal order dated November 30, 2022 passed by the Trial Court. The remedy available to the plaintiff is appeal under Order XLIII Rule 1 (c) of CPC and not revision under Section 115 of CPC. Therefore, this Civil Revision Petition is liable to be dismissed as not maintainable.

14.In the result, the Civil Revision Petition is dismissed as not maintainable. Considering the facts and circumstances of the case, there shall be no order as to costs.

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1.The Subordinate Court,
Attur.

2.The Section Officer,
VR Section,
Madras High Court.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN
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