

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) No.593 OF 2016**

Arumugam : Petitioners  
versus

Kandasamy (died)

1.Kuppusamy

2.Mariappan

3.Subramani

4.Somasundaram

5.K.Palanisamy : Respondents

**PRAYER:** Revision filed against the order dated 15.2.2016, in I.A.No.149 of 2016 in O.S.No.378 of 2012 on the file of the District Munsif cum Judicial Magistrate, Omalur.

For petitioner :: Mr.P.Mani

For respondents :: Mr.S.Doraisamy

**ORDER**

The petitioner was arrayed as 6<sup>th</sup> defendant in O.S.No.378 of 2012. The petitioner along with other defendants filed written statement. Subsequently, the petitioner came to know that he was set exparte by the Trial Court on 10 October 2012. The petitioner immediately thereafter filed an application to set aside the exparte order, in I.A.No.149 of 2016. The application was dismissed by the learned Trial Judge on the ground of limitation. The said order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. This Court, in ***Kasthuri and others vs. Saravanan, 2010(4) CTC 705***, while considering an application under Order 9 Rule 7 CPC, held that there is no limitation prescribed to set aside an exparte order, at any stage of the suit. In the subject case, the suit is still pending.

4. The petitioner filed the subject application before recording evidence on the side of the defendant. The Trial Court was not correct in dismissing the application in I.A.No.149 of 2016 for the reasons set out in the impugned order. I am therefore of the view that the impugned order is

liable to be set aside.

5. In the result, the order dated 15 February 2016 is set aside. The application in I.A.No.149 of 2016 is allowed.

6. The petitioner has already filed written statement. It is open to the petitioner to give evidence as a defendant. However, he is not entitled to file a petition to reopen or recall the witnesses examined on the side of the respondents herein.

7. The civil revision petition is disposed of with the above direction. No costs. Consequently, M.P.No. is closed / dismissed.

**24.11.2016**

Index:Yes/no  
tar

To

The District Munsif cum Judicial Magistrate, Omalur.

**K.K.SASIDHARAN, J.**

(tar)

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