



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Rev.Apl.C(MD)No.40 of 2016

in

S.A.(MD)No.93 of 2012

WEB COPY

Noorzhahan

... Review Petitioner /
Appellant

Vs.

1.Jeyaraj

2.KR.Indirani

3.A.Devi

Katheeja Begum (died exonerated)

4.V.Kumar

5.Mariamammal

6.Selvaraj

7.Lakshmi

8.S.Kala

9.Ananthan

10.Muthuganesan

11.G.Sudha

12.Shanmugam

13.Karuppaiah

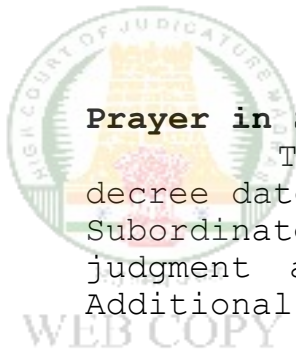
Ramasamy (died exonerated)

14.The District Collector,
Sivagangai.

15.The Tahsildar,
Karaikudi.

... Respondents/Respondents

Prayer in Rev.Aplc: Petition filed under Section 114 r/w Order 47 Rule 1 of C.P.C., to review the judgment and decree in S.A.No.93 of 2012, dated 21.02.2014 passed by this Court and allow the second appeal.



Prayer in SA(MD). 93/ 2012 :

The Memorandum of Second Appeal against the judgment and decree dated 14.11.2011 passed in A.S.No. 82/2011 on the file of the Subordinate Court, Devakottai, Sivagangai District in reversing the judgment and decree dated 07.12.2010 in O.S.No. 3/2007 by the Additional District Munsif Court, Karaikudi.

For Petitioner : No appearance

For R1 to R6, R8
to R13 : No appearance

For R7 : Mr.C.Arul Vadivel @ Sekar

For R14 & R15 : Mr.M.Muthu Vijayan
Spl.GP

ORDER

This petition has been filed for reviewing the judgment and decree dated 21.02.2014 made in S.A.No.93 of 2012.

2. When the matter was listed for hearing, there was no representation on the side of the review petitioner. The case was therefore directed to be posted under the caption 'for dismissal'. The mobile phone call made by the court officer was not attended by the petitioner's counsel. I wondered if the review petition can be disposed of on merits. Of-course, a regular civil appeal cannot be decided on merits, if the counsel for the appellant does not appear on the hearing date. That is the mandate set out in Order 41 Rule 11(2) of C.P.C. The said provision is as under:-

"(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed."

3. There is no corresponding provision in order 47. Order 47 Rule 4(1) states that where it appear to the Court that there is no sufficient ground for a review, it shall reject the application. Order 47 Rule 7(2) of C.P.C states that where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.



4.One can therefore infer that if the review applicant fails to appear, the court will have to necessarily dismiss the review petition for default and that it cannot decide the same on merits. Therefore, this review petition is dismissed for default.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Subordinate Judge,
Devakottai,
Sivagangai District

2.The Additional District Munsif,
Karaikudi.

+1 CC to M/S.B.S.MANJUNATH, Advocate, SR-11608, dated 11/03/2022

+1 CC to M/S.THE SPECIAL G.P. SR-11583, dated 11/03/2022

Rev.Apl.C(MD)No.40 of 2016

in

S.A.(MD)No.93 of 2012

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RK(13/05/2022) 3P 5C