

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P. (NPD) NO.2475 OF 2017
AND CMP NO.11685 OF 2017

R.Jagannathan ... Petitioner

Vs.

R.Radhakrishnan ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree passed in O.S.No.4438 of 2005 dated 08.03.2006 by the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Vaidhyanathan

ORDER

This Civil Revision Petition is directed against the judgment and decree dated 08.03.2006, passed in O.S.No.4438 of 2005, by the 17th Assistant City Civil Court, Chennai.

2. The petitioner is the defendant in the suit. The respondent/plaintiff has filed the suit for permanent injunction restraining the defendant or his men or agents from interfering with the day today business/possession and enjoyment of the machineries of the plaintiff. In the suit, the petitioner/defendant was set *exparte*. The matter was posted for *exparte* evidence. Since the plaintiff has absented himself, it was dismissed for default.

3. The contention of the petitioner is that since the suit was dismissed for default, he did not take any further action to set aside the *exparte* order passed against him. But the respondent / plaintiff has filed a petition to restore the suit on file with a petition to dispense with the notice to the defendant in restoration petition. The Lower Court has ordered the dispense with petition and restored the suit on file and thereafter, passed a decree on 08.03.2006. The petitioner and the respondent are brothers and they have been jointly doing the business in the same place and after some time, the name of the business was also changed. But all of a sudden, the respondent/plaintiff, armed with the judgment and decree is interfering with the peaceful possession and

enjoyment of the petitioner/defendant. Therefore, he has filed a suit for permanent injunction before the City Civil Court, Chennai, in O.S.No.154 of 2017. Simultaneously, the Civil Revision Petition is filed on the ground that he got knowledge of the *exparte* decree only on 05.01.2017. Therefore, the present Civil Revision Petition is filed to set aside the judgment and decree dated 08.03.2006, passed in O.S.No.4438 of 2005.

4. It is further contended that while entertaining the petition under Order IX Rule 9 of the Civil Procedure Code to restore the suit, notice shall be served on the opposite party. In so far as, the notice was not served on the petitioner / defendant, the decree passed by the Trial Court is illegal and therefore, it shall be set aside.

5. After perusing the typed set filed by the petitioner, it is seen that he was set *exparte*. Thereafter, the suit was dismissed for default. Again the respondent / plaintiff has filed a petition to restore the suit and also a petition to dispense with the service of notice on the petitioner / defendant, as he has already been set *exparte*.

6. It is well settled that once a person is set *exparte*, he goes out of the litigation and is not entitled to service of notice, until the *exparte* decree / order is set aside.

7. In the present case, the Trial Court has rightly dispensed with the service of notice and restored the suit. Therefore, the order passed by the Trial Court in restoring the suit cannot be construed as illegal. The petitioner has to work out his remedy in the manner known to law, in the suit filed by him.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

31.07.2017

Index : Yes/No

Internet : Yes/No

TK

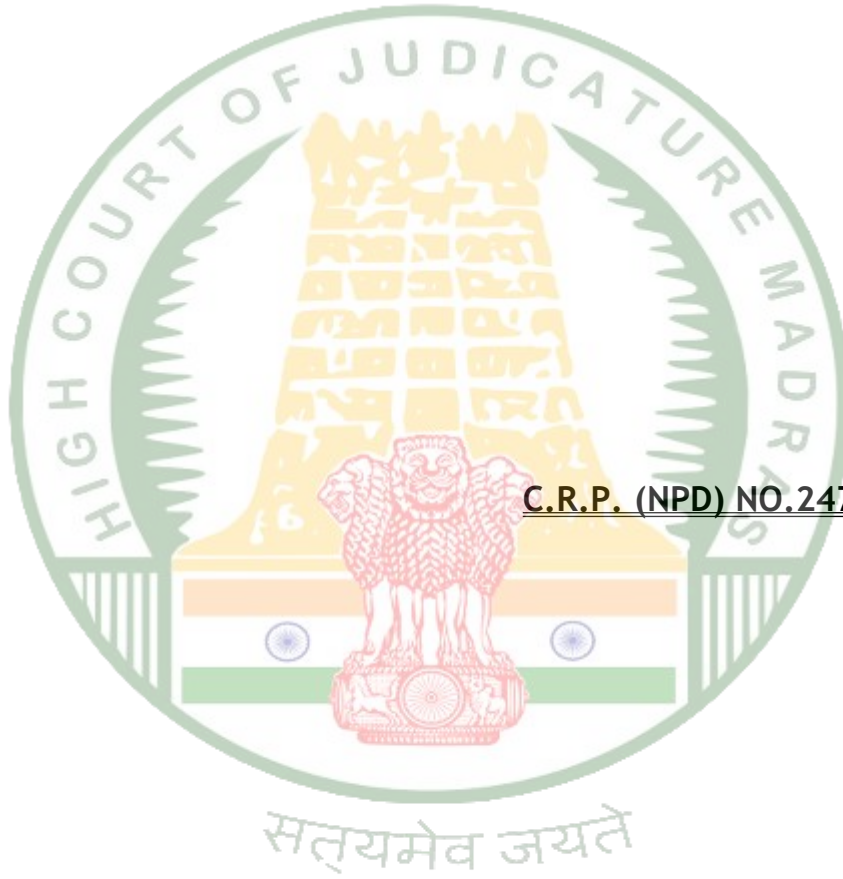
To

The XVII Assistant City Civil Court
Chennai.

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M.GOVINDARAJ, J.

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