

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.04.2017**

CORAM:

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

C.R.P.(P.D.) No. 3805 of 2014 and
M.P.No.1 of 2014

R.Prema

...Petitioner

Vs

1. The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St. George, Chennai-600 009.

2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Chennai - 600 035.

3. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, as against the order and decretal order dated 14.07.2014 passed by the Hon'ble learned IV Assistant Judge, City Civil Court, Chennai in I.A.No.537 of 2014 in O.S.No.1328 of 2010.

For Petitioner : Mr.S.Natarajan

For R1 : No Appearance

For R2 and R3 : Mr.R.Jayaseelan

ORDER

This Civil Revision Petition is directed against the order dated 14 July, 2014 in I.A.No.537 of 2014 in O.S.No.1328 of 2010, allowing the application filed by the State of Tamil Nadu, through Secretary to Government, Housing and Urban Development Department, to set aside the ex parte order dated 14 September, 2012.

2. The petitioner filed a suit in O.S.No.1328 of 2010 before the IV Assistant Judge, City Civil Court, Chennai against the respondents for declaration, mandatory injunction and permanent injunction. The first respondent appears to have not filed written statement within the time frame permitted by law. Since written statement was not filed in spite of giving opportunity, the Trial Court declared the first respondent ex parte.

3. The first respondent filed an application in I.A.No.537 of 2014 invoking Order 9 Rule 7 of the Code of Civil Procedure to set aside the ex parte order. The learned Trial Judge having found prima facie case made out by the first respondent allowed the said application. It is the said order, which is impugned in this civil revision petition.

4. The learned counsel for the petitioner contended that even along with the application filed under Order 9 Rule 7 CPC, the first respondent has not filed written statement. The Trial Court was therefore not correct in

allowing the application.

5. The suit in question was filed by the petitioner for declaration. The respondents 2 and 3 have filed written statement. The first respondent appears to have not filed written statement. Before the Trial Court, the first respondent submitted that there is no separate written statement and they would adopt the written statement filed by the respondents 2 and 3. It was only on account of the said submission, the Trial Court allowed the application and set aside the ex parte order. The learned Trial Judge exercised the discretion and allowed the application filed by the first respondent under Order 9 Rule 7 of CPC. I am therefore of the view that there is no ground made out by the petitioner to set aside the order dated 14 July, 2014.

6. The learned IV Assistant Judge, City Civil Court, is directed to give reasonable time to the first respondent either to file a written statement or a memo adopting the written statement of respondents 2 and 3.

7. The Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2017

K.K.SASIDHARAN,J.

(svki)

To

The IV Assistant Judge, City Civil Court,
Chennai.

C.R.P.(P.D.) No. 3805 of 2014

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