

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 03.07.2017****CORAM****THE HON'BLE MS. JUSTICE V.M.VELUMANI**

**C.R.P(NPD)No.3982 OF 2011**  
**and**  
**M.P.No.1 of 2011**

K.A.Ashok,  
 Proprietor,  
 M/s A.R.Timber Traders & Saw Mills,  
 No.7, 1 Cross Street,  
 Venkatrathinam Nagar Extension,  
 Adayar, Chennai 600 020.

.. Petitioner

/versus/

K.Sangeetha,  
 Proprietrix,  
 M/s Kushal Traders,  
 No.5, Old No.2/2 Armernian Street,  
 1<sup>st</sup> Floor, Mannady,  
 Chennai 600 001.

.. Respondent

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India praying to call for the records on the file of the XVI Assistant City Civil Court, Chennai in I.A.No.13353 of 2009 in O.S.No.4665 of 2008 and set aside the impugned order dated 25.08.2011 passed therein.

For Petitioner  
 For Respondent

:Mr.J.Ashok  
 :Mr.V.Bhiman for  
 M/s Sampath Kumar Associates  
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**ORDER**

Civil Revision Petition is filed praying to call for the records on the file of the XVI Assistant City Civil Court, Chennai in I.A.No.13353 of 2009 in O.S.No.4665 of 2008 and set aside the impugned order dated 25.08.2011 passed therein.

2. The petitioner is the defendant and respondent is plaintiff in O.S.No.4665 of 2008 on the file of the XVI Assistant Civil Court Court, Chennai. The respondent filed the suit under Order XXXVII, Rule 1 of Civil Procedure Code, invoking summary proceedings. The petitioner entered appearance and filed written statement on 16.02.2009. The respondent filed an application in I.A.No.13353 of 2009 to reject the written statement filed by the petitioner and decree the suit as provided under Order XXXVII, Rule 3(6)(a) of C.P.C., on the ground that in a summary suit, the petitioner is not entitled to file written statement, without obtaining leave from the Court.

3. The petitioner filed counter affidavit and opposed the same on the ground that he filed vakalat and entered appearance on 30.12.2008 through one Advocate Mr.N.P.Kumar on 30.12.2008. The learned Judge has directed the petitioner to file the written statement on 23.01.2009 and further

adjourned to 16.02.2009 for filing written statement. The petitioner filed written statement on 16.02.2009. For the above reasons, he prayed for dismissal of the application in I.A.No.13353 of 2009 filed by the respondent.

4. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials on record, allowed the application holding that when the petitioner entered appearance on 30.12.2008, he ought to have given notice of appearance and he is not entitled to file written statement and hence, rejected the written statement filed on 16.02.2009.

5. Against the order dated 25.08.2011 made in I.A.No.13353 of 2009, the present civil revision petition is filed by the petitioner.

6. According to the learned counsel appearing for the petitioner, there is no provision under Order XXXVII, Rule (3)6(a) of Code of Civil Procedure praying for rejection of the written statement already filed. The petitioner filed written statement as directed by the Court. On appearance of the petitioner, the respondent ought to have served summons for judgment in Form No.4-A in Appendix B. The respondent failed to serve such summon. Therefore, the trial Court has rightly directed the petitioner to file written statement. The reason given by the respondent that his counsel was

prevented from entering into the Court premises on 16.02.2009, due to mass violence, is contrary to the facts. No such incident was happened on that day and prayed for allowing the civil revision petition.

7. The learned counsel appearing for the respondent submitted that the respondent filed the suit in O.S.No.4665 of 2008 under Order XXXVII, Rule 1 of Code of Civil Procedure Code invoking summary proceedings and the petitioner, without following the procedure, filed the written statement. The respondent filed the application in I.A.No.13353 of 2009 to reject the written statement filed by the petitioner and decree the suit as provided under Order XXXVII, Rule (3)(6)(a) of the Code of Civil Procedure. The learned Judge has considered the provisions under Order XXXVII and allowed the application by giving valid reason and hence, prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

9. In a suit filed under Order XXXVII, Rule 1 of Code of Civil Procedure, the petitioner must give notice of appearance to the counsel for

respondent on entering appearance, as per Order XXXVII, Rule 3 of the Code of Civil Procedure, which reads as under:

**"3-Procedure for the appearance of defendant:-**

(1) In suit to which this Order applies, the plaintiff shall, together with the summons under Rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the

amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment---

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may be given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]

10. The petitioner also must first file into the Court an address for service of notices on him, as per the Order XXXVII, Rule 3(1) of Code of Civil Procedure. The contention of the learned counsel for petitioner that on defendant entering appearance, the plaintiff must serve the defendant summons for judgment as per Order XXXVII Rule 3(4) is contrary to the provisions. Rule 3(3) and (4) must be read together and only when the defendant gives notice of appearance to the counsel for plaintiff or to plaintiff, when the plaintiff appears in person, the plaintiff can serve summons for

judgment and give notice of appearance to the counsel for the plaintiff or plaintiff, if he appears in person as per Rule 3(3). The petitioner has failed to comply with the Order XXXVII, Rule 3(3) of Code of Civil Procedure. Therefore, question of serving summons for judgment in Form No.4-A by the respondent does not arise. The learned Judge has considered the provision of Order XXXVII, Rule 3(3) of Code of Civil Procedure and failure on the part of the petitioner to serve notice of the appearance on the counsel for the respondent, allowed the application in I.A.No.13353 of 2009 and rejected the written statement filed by the petitioner on 16.02.2009.

11. The contention of the learned counsel for the petitioner is that the learned Judge erroneously rejected the written statement filed by the petitioner and decreed the suit as provided under Order XXXVII, Rule (3)(6)(a) of the Code of Civil Procedure. Further, the contention of the learned counsel for the petitioner is that the respondent having failed to serve the summons for judgment, the written statement filed by the petitioner was taken on file and there is no irregularity in taking the written statement on file. These contentions have no merits. Only when the petitioner serves the notice of appearance, the respondent can serve summons for judgment and then, the petitioner must file application for leave to defend the suit. Only when leave is granted to the petitioner to defend the suit, the petitioner can

file written statement. Having failed to serve notice on the learned counsel for the respondent, the petitioner cannot blame the learned counsel for the respondent for not having served summons for judgment. The learned Judge had considered Order XXXVII, Rule 3 of Code of Civil Procedure and allowed the application by exercising the power conferred on him properly and there is no irregularity in the order passed by the learned Judge warranting interference by this court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

03.07.2017

Index:Yes/No  
Internet:Yes/No

dm/ari

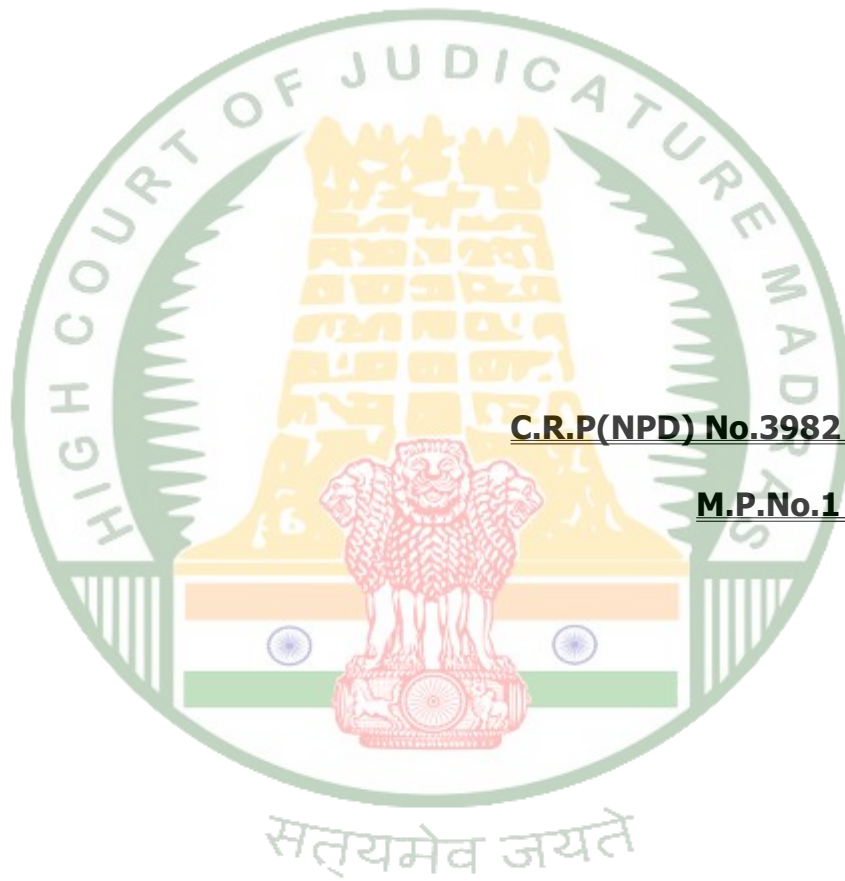
To

The XVI Assistant City Civil Court, Chennai

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**V.M.VELUMANI, J.**

dm/ari



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