IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4793 of 2011
& M.P.No.1 of 2011

The Correspondent,
Bharath Matriculation School,
Vellore. .. Petitioner

Vs.

1.Syed Fshullah (Died)
2.Asseena
3.Minor Sanaullah
4.Minor Shamma
5.Minor Ashma
6.Ramiza .. Respondents

(Respondents 3 to 5 Represented
by R2)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.07.2011 made in I.A.No.442 of 2010 in I.A.No.336 of 2006 in M.C.O.P.No.13 of 2006 on the file of the Subordinate Court, Vellore.

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For Petitioner : Mr.B.Vijay

For R1 : Died

For R2 & R6 : No appearance

For R3 to R5 : Minors represented by R2

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O R D E R

This Civil Revision Petition has been filed against the fair and decretal order dated 06.07.2011 made in I.A.No.442 of 2010 in I.A.No.336 of 2006 in M.C.O.P.No.13 of 2006 on the file of the Subordinate Court, Vellore.

2.The petitioner is the respondent, the deceased first respondent is the petitioner and respondents 2 to 6 are the legal heirs of the deceased first respondent in M.C.O.P.No.13 of 2006 on the file of the Subordinate Court, Vellore. The deceased first respondent filed the said M.C.O.P, claiming a sum of Rs.4,00,000/- as compensation for the injury sustained by him in the accident that occurred on 14.09.2005. M.C.O.P was posted for appearance of the petitioner on 07.06.2006. On that day, the petitioner did not appear. He was set exparte and exparte award was passed on 13.07.2006. The petitioner filed I.A.No.336 of 2006 to set aside the exparte award dated 13.07.2006. Mean while, on 12.02.2007, the claimant died. The respondents 2 to 6 were impleaded as his legal heirs and they filed counter affidavit and opposed the said application filed by the petitioner to set aside the exparte award on the ground that against the dead person, application is not maintainable. The application I.A.No.336 of 2006 was posted for hearing on

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25.08.2010. On that day, the petitioner and his counsel did not appear and the said application was dismissed for default.

3.The petitioner filed present I.A.No.442 of 2010 to restore I.A.No.336 of 2006 which was dismissed for default on 25.08.2010. I.A.No.442 of 2010 was filed on 23.09.2010. According to the petitioner, on 25.08.2010, the counsel for the petitioner was representing the other case before District Court, Vellore. Before he could reach the Court and appear and represent the petitioner before the Tribunal, I.A.No.336 of 2006 was called and dismissed for default. Non-appearance of the petitioner or his counsel on that day is neither wilful nor wanton. The respondents 2 to 6 filed counter affidavit and contended that the application against dead person is not maintainable.

सत्यमेव जयते

4.The learned Judge dismissed the application holding that the petitioner has not given reason for non-appearance and only to avoid payment of compensation, the petitioner did not appear on that day.

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5.Against the said order of dismissal dated 06.07.2011 made in I.A.No.442 of 2010 in I.A.No.336 of 2006 in M.C.O.P.No.13 of

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2006, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondents 2 and 6 and their names are printed in the cause list, there is no representation for them either in person or through counsel. The respondents 3 to 5 are minors represented by the second respondent.

7.From the materials on record, it is seen that the exparte order was passed on 13.07.2006 against the petitioner. The petitioner filed I.A.No.336 of 2006 on 20.07.2006 to set aside the exparte award without any delay in filing the said application. The said application was pending for four years for enquiry. On 25.08.2010, it was dismissed for default for non-appearance of the petitioner or his counsel. Again, the petitioner immediately filed I.A.No.442 of 2010 to restore present I.A.No.336 of 2006 without any delay. According to the petitioner, his counsel was held up before the District Court, Vellore and before he could find out his counsel and his counsel appear before this Court, the application was dismissed for default. The learned Judge without considering

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this explanation, dismissed the application holding that petitioner has not given any reason for non-appearance and only to avoid payment of compensation to the respondents, he did not appear before the Court. These reasons given by the learned Judge are erroneous. In view of the such infirmity, the order of the learned Judge dated 06.07.2011 made in I.A.No.442 of 2010 in I.A.No.336 of 2006 in M.C.O.P.No.13 of 2006, is liable to be set aside and is hereby set aside.

8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

The Subordinate Judge,
Vellore.

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V.M.VELUMANI, J.

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