



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P (NPD) (MD) No.2634 of 2016
and C.M.P. (MD) No.12384 of 2016

N.Vishwaksenan Pillai

... Petitioner/Respondent

-Vs-

K.Geetha

.. Respondent/Petitioner

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order and the decretal order made in I.O.P.No.5 of 2012 dated 23.09.2016 on the file of the Sub Court, Kuzhithurai.

For Petitioner : Mr.N.Sivakumar

For Respondent : Mr.A.Thiruvadikumar

ORDER

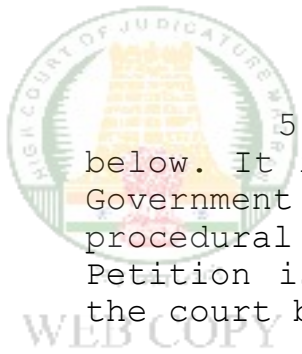
The respondent in the Civil Revision Petition met with an accident on 19.11.2010 on account of the fall of a overhead tank from the building belonging to the revision petitioner herein. She filed a suit for damages.

2. According to the respondent herein, she lacks the means to pay court fee. Therefore, she filed I.O.P.No. 5 of 2012 on the file of the Sub Court, Kuzhithurai seeking leave to institute the suit as an indigent person. The I.O.P was allowed on 23.09.2016. Questioning the same, this Civil Revision Petition has been filed.

3. Heard the learned counsel appearing on either side.

4. The learned counsel appearing for the revision petitioner drew the attention of this Court to Order XXXIII Rule 6 of C.P.C. The said provision reads as under:

Notice of day for receiving evidence of applicant's (indigency)- Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5. It shall fix a day(of which at least ten day's clear notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his (indigency), and for hearing any evidence which may be adduced in disproof thereof.



5. This Court had a look at the order passed by the court below. It is not evident there-from that no notice was given to the Government Pleader. Therefore, on the ground of violation of the procedural requirement, order impugned in this Civil Revision Petition is set aside. The matter is remanded back to the file of the court below.

6. The court below shall follow the procedures set out in Order XXXIII of C.P.C and pass orders afresh in accordance with law. The court below shall pass orders afresh within a period of six weeks from the date of receipt of a copy of this order.

7. The learned counsel for the respondent made a specific allegation that building in question is not an approved one. The Government Pleader, to whom notice ordered, shall take up the matter with the local planning authority and shall take appropriate action in accordance with law if it turns out the building in question is not an approved one.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No.12384 of 2018 2016 is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To,
The Sub Judge, Kuzhithurai.

+1CC to Mr.N.Sivakumar, Advocate, SR.No. 91893
+1CC to Mr.A.Thiruvadikumar, Advocate, SR.No91536

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CM
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