

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.2636 of 2018

Order:

This is a very curious revision filed by the defendant in a suit for eviction. In the suit for eviction filed by the respondent herein, the petitioner was set *ex parte* and a decree was passed. The petitioner filed an application in I.A.No.17 of 2016 for setting aside the *ex parte* decree. The application was allowed by the Trial Court by an order dated 28-6-2017 upon payment of costs of Rs.100/- with a further condition that the counsel for the petitioner/defendant should cross-examine P.W.1 on the next date of hearing.

2. But the counsel for the petitioner/defendant failed to cross-examine P.W.1. Therefore, the application under Order IX, Rule 13 CPC was dismissed for failure to comply with the condition.

3. Challenging the said order, the petitioner/defendant filed an appeal. The appeal was dismissed on the short ground that under Order XLIII, Rule 1 CPC, such an order cannot be challenged. Therefore, the defendant is before this Court.

4. First of all, the petitioner does not deserve any indulgence from this Court. She remained *ex parte* in the suit and a decree came to be passed. She filed an application for setting aside the *ex parte* decree. It was allowed on condition

that the petitioner pays costs of Rs.100/- to the other side and also to get ready for cross-examination of P.W.1 on the next date.

5. Having got a fresh lease of life from the Court, the petitioner should have paid costs and proceeded with the cross-examination of P.W.1. But she did not do so. Therefore, the application under Order IX, Rule 13 CPC stood rejected. This order cannot at all be found fault with, even if the petitioner has come up with a revision against the said order.

6. In any case, Order XLIII, Rule 1(d) CPC provides for an appeal only as against the rejection of an application under Order IX, Rule 13 CPC. In this case, there was no rejection of the application under Order IX, rule 13 CPC. The application was allowed, subject to a condition which was not at all onerous. Still, the petitioner failed to comply with the condition. Therefore, the First Appellate Court was right in rejecting the appeal as not maintainable. I find that even the order passed in the application under Order IX, Rule 13 CPC is unassailable. The civil revision petition is completely devoid of merits, hence, it is dismissed. The interlocutory applications, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

27th April, 2018.
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