

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No.3691 of 2019 and C.M.P.No.24286 of 2019

V.Sivasubramanian

... Petitioner

-Vs-

1.A.Rosali

2.Dr.Sebasti Prabha

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 01.10.2019 in the Memo in O.S.No.5366 of 2018, on the file of the learned XV Assistant City Civil Judge, Chennai.

For Petitioner : Mr.K.P.Chandrasekaran

O R D E R

This revision petition has been filed against the fair and decreetal order dated 01.10.2019 in the Memo in O.S.No.5366 of 2018, on the file of the learned XV Assistant City Civil Judge, Chennai.

2. Before the trial Court, the revision petitioner filed the summary suit under Order XXXVII, where summons were served on the respondents / defendants. Thereafter, he filed vakalat on 28.01.2019 and thereafter, it seems the case was adjourned to 26.02.2019 for notice of appearance and summons for judgment. After that, the defendants have filed proof of notice of appearance and thereafter the plaintiff also filed proof of summons for judgment and on receipt of the same, the respondents / defendants filed leave to defend and the I.A.No.1 of 2019 was posted for filing counter by the revision petitioner / plaintiff.

3. At this juncture, the said memo has been filed by the revision petitioner before the Court below stating that, the summons for judgment given by the plaintiff / revision petitioner itself is to be eschewed and the said memo since has been rejected by the impugned order, the plaintiff has preferred this revision petition.

4. Heard Mr.K.P.Chandrasekaran, learned counsel appearing for the revision petitioner / plaintiff, who would submit that the procedure contemplated under Order XXXVII has not been properly followed by the learned Judge.

5. However, in the impugned order, the learned Judge has stated as follows.

"On perusal of records, it reveals that the 1st defendant filed his Vakalath on 28.01.2019 and adjourned the case to 26.02.2019 for notice of appearance and summons for judgment. As per provisions of Order 37 of CPC, after giving notice of appearance by the defendants only the plaintiff has to file a summons for judgment. In this case, inadvertently this Court simultaneously ordered notice of appearance and summons for judgment on 28.01.2019 and case was adjourned to 26.02.2019. Subsequently, D1 filed affidavit of service for his notice of appearance on 18.03.2019 and case was adjourned to 03.04.2019 for summons for judgment. On 03.04.2019, the plaintiff filed an Affidavit of Service of Summons for judgment and it was duly served to D1 and on the day itself D1 filed a petition for leave to defend the suit and the same was returned for certain defects. Subsequently, that petition was numbered as I.A.No.2/19 on 15.07.2019 and the same is pending for counter. On that day itself, the plaintiff filed this memo.

6. Therefore, the learned Judge has mistakenly adjourned the case on 28.01.2019 to 26.02.2019 for both notice of appearance as well as summons for judgment. However, the same has been rectified and the first defendant filed affidavit of service for notice of appearance only on 18.03.2019 and thereafter the case was adjourned to 03.04.2019 for summons for judgment and on 03.04.2019, the plaintiff filed affidavit of service for summons for judgment and it was duly served to the first defendant and on the very same day itself, the first defendant filed a petition for leave to defend, where it is posted for counter.

7. On a perusal of the same, this Court feels that there is no necessity for the plaintiff to file the memo to eschew the summons for judgment filed by the plaintiff himself before the Court below and therefore, the said plea, since has been rejected, of course rightly by the learned Judge in the impugned order, it does not require any interference from this Court. In that view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

KST
To

The XV Assistant City Civil Judge, Chennai.

C.R.P. (PD) No.3691 of 2019

A.SK(19/12/2019)



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