

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CRP (PD) NO.576 OF 2017
AND CMP NO.2878 OF 2017

Karumannan .. Petitioner

Versus

Elaiappa Gounder .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.42 of 2015 in I.A.No.33 of 2015 in I.P.No.5 of 2003 dated 11.01.2016 on the file of the Sub Court at Namakkal.

For Petitioner : Mr.MA.P.Thangavel
For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition is directed against the fair and final order dated 11.01.2016 passed in I.A.No.42 of 2015 in I.A.No.33 of 2015 in I.P.No.5 of 2003 by the Sub Court at Namakkal.

2. The petitioner filed an insolvency petition in I.P.No.5 of 2003 before the Sub Court, Namakkal, to declare him as insolvent. In the

said petition, the second respondent therein/respondent herein was set *exparte* on 25.08.2006. Subsequently, an *exparte* order came to be passed. After that, the respondent herein, filed an interlocutory application in I.A.No.33 of 2015 in I.A.No.5 of 2003 to set aside the *exparte* order during the pendency of the proceedings on 27.10.2015. The Sub Court, Namakkal, has set aside the *exparte* order and permitted the second respondent therein/respondent herein, to participate in further proceeding. Aggrieved over the same, the petitioner filed an interlocutory application in I.A.No.42 of 2015 in I.A.No.33 of 2015 in I.P.No.5 of 2003 seeking to set aside the order dated 23.11.2015 passed by the Sub Court, Namakkal in I.A.No.33 of 2015. The said application was dismissed by the Sub Court, Namakkal on 16.02.2016. Hence, this revision.

3. According to the petitioner, when there is no limitation prescribed for filing an application, the residuary power vests under Article 137 of the Limitation Act, will apply, as per which, the application should have been filed within three years, where limitation is not prescribed under Order IX Rule 7 of Code of Civil Procedure.

4. Relying on the judgment of this Court in **VISALAKSHI VS. UMAPATHY AND OTHERS [2015 (5) CTC 67]** it is contended by the learned counsel appearing for the petitioner that the application filed under Order IX Rule 7 of Code of Civil Procedure is hit by limitation and the Trial Court should not have allowed the application.

5. Per contra, learned counsel appearing for the respondent would rely on the judgment of this Court in **PILLA REDDY VS. THIMMARAYA REDDY AND OTHERS [1997 (1) MLJ 37]** wherein it is observed that under Order IX Rule 7 C.P.C., the Court can permit the petitioners to participate in the proceedings from the date they appear and for the said purpose, they need not show any good or sufficient cause.

6. I have considered the rival contentions.

7. At the first instance, as long as the proceedings are pending, a person, who was set *exparte*, at a later stage, cannot be prevented from participating the case for ever. It is well settled that he

cannot be relegated to the old position, but he can participate in the future proceedings. He cannot be deprived of his right in participating the suit as long as the proceeding is pending. Secondly, as per the order passed by the Trial Court under Order IX Rule 7 C.P.C., if the petitioner is aggrieved, it is open to him to take it up on appeal or revision before the appropriate Court. After passing the order, the Trial Court become *functus officio* and it cannot rewrite the order in another application.

8. In view of the same, I do not find any merit in this Civil Revision Petition and accordingly, stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

19.07.2019

Index : Yes/No

Internet : Yes/No

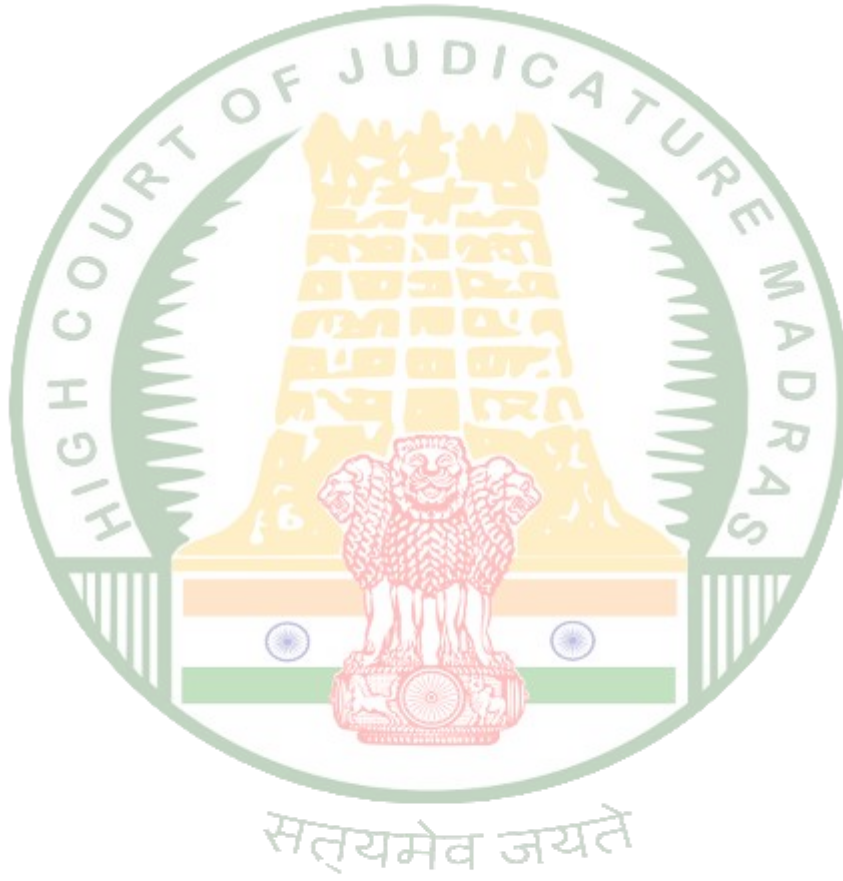
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To

The Subordinate Judge
Sub Court,
Namakkal.



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M.GOVINDARAJ, J.

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CRP (PD) NO.576 OF 2017

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