

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.RP(NPD)No. 2481 of 2018**

**and**

**C.M.P.No. 15235 of 2018**

1.S.Nalini

2.Dinesh

3.Minor Madhumidha

rep. By her Mother S.Nalini

...Petitioners

Vs.

1.M/s. Alfa Chemicals,

rep. By its Managing Partner,

K.P.Shanmugam

2.M/s.Srinivasa Chemicals, (Given up)

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.03.2016 passed in I.A.No.368 of 2014 in O.S.No.165 of 2011 by the learned III – Additional District Judge, Salem.

For Petitioners : Mr.V.Subramanian for S.P.Yuaraj

For Respondents : Mrs.Zeenath Begum for R1

R2 – Given up

**ORDER**

This Civil Revision Petition is at the instance of the defendants in O.S.No.165 of 2011 on the file of the III-Additional District Judge, Salem.

2. The said suit was launched by the respondent / plaintiff for recovery of sum of Rs.10,15,205/- allegedly due under three cheques issued by one Sakthivel, husband of the first petitioner and father of the petitioners 2 and 3. The suit came to be dismissed by the learned III-Additional District Judge on 28.01.2013 despite the defendants having remained exparte. It appears that an application for review was filed in I.A.No.368 of 2014. The petitioners herein were set exparte in the review petition, one S.Kavitha has appointed as Court guardian for the minor and the review petition came to be allowed by the III-Additional District Judge on 30.03.2016. It is against this order, this Civil Revision Petition has been filed by the defendants 2, 3 and 4 in the suit.

3. Heard Mr.V.Subramanian for Mr.S.P.Yuaraj, learned counsel for the petitioners and Mr.Zeenath Begum, learned counsel for the first respondent.

4. Mrs.Zeenath Begum, learned counsel for the first respondent would raise the preliminary objection regarding the maintainability of this Civil Revision Petition. Referring to Order 43 Rule 1 W of C.P.C. she would submit that order made in a review application is an appealable order and not a revisable order and as such the civil revision petition itself is not maintainable. The remedy of the petitioner is to prefer an appeal in the competent Court. She would also contend that this revision has been filed only with a view of to get over the limitation for filing the appeal.

5. Mr.V.Subramanian, learned counsel for the petitioner would submit that when the Court has acted in excess of its jurisdiction, a Civil Revision Petition under Article 227 would lie. I am unable to countenance the submission of the learned counsel for the petitioners. An appeal remedy is definitely a better and wider remedy than a revision under Article 227 of the Constitution of India. It is also seen from the records that the order passed in the review petition is an ex parte order and it is claimed that the petitioners were not served with proper notice in the review petition. Therefore, it is open to them to seek to set aside the ex parte order by

showing sufficient cause for the delay. If the petitioners have not been properly served then they could have filed an application for setting aside the exparte order within 30 days from the date of knowledge. Unfortunately, this has not been done and the petitioners have chosen to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitutio of India. This Court has entertained the Civil Revision Petition and the same has been pending for nearly two years now.

6. In view of the above, while upholding the preliminary objection of the learned counsel, I reserve the liberty to the petitioners to seek to set aside the exparte order passed in the review petition dated 30.03.2016, of course, along with an application for condonation of delay. While considering the application for condonation of delay, the Additional District Court will also take into account the pendency of the revision before this court. With this liberty, this Civil Revision Petition is dismissed as not maintainable. Consequently, connected miscellaneous petition is closed. No costs.

**07.09.2020**

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To:-

The III – Additional District Court,  
Salem.

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**R.SUBRAMANIAN, J.**

KKN

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