

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2986 of 2018

M.Rajendran

.. Petitioner

Vs.

1. Thambiran

2. Prabhakaran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 05.12.2017 passed in I.A.No.137 of 2017 in C.M.A.No.10 of 2016 on the file of the Sub Court, Madurantagam.

For Petitioner : Mr.S.Sriram
for M/s.Govi Ganesan

For Respondents : Mr.N.Nagusah

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is by the appellant in CMA No.10 of 2016 challenging an order made in IA No.137 of 2017 filed by the respondent seeking to set aside the order setting the respondent *ex parte* in the Appeal under Order 9 Rule 7 of the Code of the Civil Procedure.

2. The Appeal was preferred by the petitioner challenging an order dismissing his application for interim injunction, pending the suit in OS No.268 of 2015. Since the respondents did not appear immediately after service, they were set *ex parte* in the appeal. The respondents filed instant application seeking to set aside the *ex parte* order 21.10.2016. The application was filed on 28.07.2017.

3. The application was opposed mainly on the ground that it is belated. The learned Subordinate Judge upon hearing the parties concluded that the respondents herein deserve a chance to be heard on merits in the Appeal. The learned Subordinate Judge also took note of the fact that no

prejudice would be caused to the petitioner, if the application is allowed. However, the learned Subordinate Judge imposed a condition that the respondents herein, must pay cost of Rs.1,000/- on or before 02.01.2018. It is this order which is now challenged in the revision. It is not in dispute that the conditional order has been complied with.

4. I have heard Mr.S.Sriram, learned counsel appearing for M/s.K.Govi Ganesan, for the petitioner and Mr.N.Nagusah, learned counsel appearing for the respondents.

5. Mr. S.Sriram, learned counsel appearing for the petitioner would vehemently contend that the learned Subordinate Judge, erred in allowing the application which was filed at least 11 months after the order setting the respondents *ex parte* was passed by the Court. It is not in dispute that the appeal was pending as on the said date and the application was only to set aside the *ex parte* order. The Appeal was not heard and disposed of on merits.

6. Therefore the application is one under Order 9 Rule 7 of the Code of Civil Procedure, for which there is no period of limitation. Hence, I do not find any illegality or irregularity in the order of the Trial Court, so as to enable me to interfere in the Revision under Article 227 of the Constitution of India. The Civil Revision Petition therefore fails and it is accordingly **dismissed**. No costs.

21.08.2020

jv

Index: Yes/No
Speaking order/ Non speaking order

To

1 The Sub Court, Madurantagam.

2. The Section Officer, V.R.Section,
High Court of Madras.

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R.SUBRAMANIAN, J.

jv



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