

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.1279 of 2021

and

CMP No.10018 of 2021

[Through Video Conferencing]

R.Sankaran

... Petitioner/Petitioner

vs.

B.C.Mani

... Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the Fair and Decretal order in M.P.No.4 of 2021 in RLTOP 17 of 2019 on the file of XVI Court of Small Cause, Chennai, dated 20.04.2021, dismissing the application as not maintainable.

For Petitioner : Mr.N.Suresh

For Respondent : No Appearance

ORDER

The revision petitioner is the petitioner in RLTOP No.17 of 2019 now pending on the file of the XVI Judge, Small Causes Court at Chennai.

2.The petitioner herein had filed an application under Section 25 of the said Act.

3.The revision petitioner's petition was taken on file and assigned M.P.No.4 of 2021. Once a Miscellaneous Petition is properly taken on file then, an obligation is placed on the part of any judicial officer to issue notice on the said application and hear both sides and then taken a considered decision as to whether, on merits the application should be allowed or on merits the application should be dismissed or that the application should be dismissed as not maintainable irrespective of the facts stated therein.

4.The XVI Judge of Small Causes Court, Chennai appears to have taken a slightly different view on such issues.

5.He had taken the application filed on record and assigned M.P.No.4 of 2021. Thereafter, even before issuing notice he had heard the learned counsel for the petitioner and rejected the said application as not maintainable. In my opinion this is not a proper approach. Any order should be based on the arguments advanced by the learned counsels. If the respondent had entered appearance, filed a counter and insisted the application may be dismissed on maintainability, then placing his reasonings on the basis of counter affidavit and on the arguments advanced and if there are any precedents on similar lines, the Judicial Officer can state whether the application is not maintainable.

6. But it would lead to anarchy if every officer turns into an advocate and takes a stand for or against the petitioner and then pass orders in accordance with his personal opinion. That may not be proper.

7. Therefore I would, set aside the order dated 20.04.2021 and place a request to the XVI Judge, Small Causes Court, Chennai to re-hear M.P.No.4 of 2021, follow the procedure in accordance with law namely issuing notice to the respondent and thereafter hearing both sides and then take any decision. If the learned Judge had any doubts regarding maintainability then, he should not have assigned a Miscellaneous Petition Number, but should have rather returned the application on the issue of maintainability which would have given an opportunity to the counsel to address the Court on those issues.

8. Therefore the order under revision is necessarily to be interfered with. I therefore set aside the order in RLTOP No.17 of 2019. The Revision Petition is allowed. Let M.P.No.4 of 2021 be remitted back to the learned XVI Judge, Small Causes Court at Chennai for re-hearing the same in accordance with law.

C.V.KARTHIKEYAN, J.

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9.With the above direction the Civil Revision Petition is allowed.
Consequently, the connected miscellaneous petition also stands closed. No
order as to costs.

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Index:Yes/No
Internet:Yes/No
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To

1.The XVI Court of Small Cause, Chennai.



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