

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No. 1306 of 2021
and
C.M.P.No.10216 of 2021

Srividhya BalajiPetitioner
Vs.
Saravanan RamamoorthyRespondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 09.04.2021, in O.S.No.4612 of 2020 on the file of the XII Assistant City Civil Court, Chennai.

For Petitioner : Ms.E.N.Hareepriya
For Respondent : Mr. R.Bagavath Krishnan

ORDER

This Civil Revision Petition is filed to set aside the impugned order dated 09.04.2021, in O.S.No.4612 of 2020 on the file of the XII Assistant City Civil Court, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner /plaintiff filed a suit against the respondent under Order 37 Rule 1 of CPC for

recovery of money. The Trial court ordered notice to the defendant including private notice for the hearing on 17.03.2021. And on 17.03.2021 the learned counsel for the defendant appeared and notice of appearance was ordered on 23.03.2021.

3. The learned counsel for the petitioner further submitted that as ordered by the court below, the petitioner took a private notice informing the filing of the suit and the case was posted to 17.03.2021.

4. The learned counsel for the petitioner contends that as per Order 37 Rule 3 of CPC, the defendant may, at any time within 10 days of service, shall enter appearance either in person or by pleader and in either case, file in court an address for service of notices on him. In the case on hand, the notice to the respondent was served on 13.02.2021. The respondent should have entered appearance on or before 13.02.2021, but he entered appearance through his counsel only on 17.03.2021. Therefore, the defendant lost the opportunity of defending the case. However, the learned XII Assistant City Civil Judge, Chennai, ordered on 09.04.2021, that both sides appeared and it would be deemed that the plaintiff has knowledge of appearance of defendant. In the

interest of justice, the case was called to summons for judgement. Hence, challenging order passed by the Trial court on 09.04.2021 in O.S.No.4612 of 2020, this Civil Revision Petition is filed.

5. The learned counsel for the respondent submitted that the respondent had not received summons from the court, only private notice was received by him. Further, the private notice sent by the petitioner is not in accordance with form IV in appendix B of Civil Procedure Code. The private notice is bereft of particulars. Therefore, the appearance by the respondent on 17.03.2021 cannot be faulted.

6. The perusal of form IV of appendix B (i.e) summary suit shows that the defendant would be summoned for appearance before the Trial Court, within 10 days from the date of receipt of the summons from the court. In default, the plaintiff will be entitled after the expiration of 10 days to obtain a decree for the sum claimed. In the private notice sent, these particulars are not clearly given. Therefore, the private notice is not in accordance with form IV of Appendix B of CPC. It is also claimed by the learned counsel for the respondent that the notice was not sent annexing court summons and

documents. In view of the defective service of private notice and that summon from the court was not received by the respondent, this court finds no reason to interfere with the order dated 09.04.2021 in O.S.No.4612 of 2020, on the file of the XII Assistant City Civil Court, Chennai.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

ep/Jer

03.09.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

1.The XII Assistant City Civil Court, Chennai.

2.The Section Officer

VR Section

High Court of Madras.

G.CHANDRASEKHARAN.J,



**C.R.P.(PD) No.1306 of 2021
and C.M.P.No.10216 of 2021**

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