



C.R.P(PD).No.373 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.373 of 2022
and C.M.P.No.1933 of 2022

1.M.S.R.Balachandran

2.Vasanthi Balachandran

... Petitioners

..Vs..

1.A.Sivasamy

2.Visalakshi

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the learned I Additional District Judge, Coimbatore, made in I.A.No.3 of 2021 in O.S.No.113 of 2015 dated 22.12.2021.

For Petitioner : Mr.M.Mariappan

For Respondents : Mr.Mukunth



C.R.P(PD).No.373 of 2022

ORDER

WEB COPY

This Civil Revision Petition has been preferred challenging the order of the learned I Additional District Judge, Coimbatore dated 22.12.2021 made in I.A.No.3 of 2021 in O.S.No.113 of 2015.

2.The revision petitioners are the defendants, against whom the respondents have filed a suit for specific performance. Since the defendants were set ex-parte, they have filed a petition under Order IX Rule 7 CPC to set aside the ex-parte order passed and the same was dismissed. Aggrieved over that, the petitioners have preferred this revision petition.

3.The learned counsel for the petitioners submitted that the defendants have a very good defence in this case and due to ill health of the 2nd petitioner, she could not make her appearance before the Court and in the interest of justice, one opportunity may be given to the petitioners by way of setting aside the ex-parte order and allowing to them to participate in the trial.

4.The learned counsel for the respondents/plaintiffs submitted that in this case, the learned trial Judge has posted the case "for judgment". Once the case is posted "for judgment", the petitioners will lose their right to file any petition



C.R.P(PD).No.373 of 2022

under Order IX Rule 7 CPC. In support of his contentions, he attracted the attention of this Court to the judgment of the Hon'ble Supreme Court reported in ***AIR 1964 SC 993 [Arjun Singh Vs. Mohindra Kumar and others]***, wherein it is held that, once the Court reserves the case "for judgment", it is at the convenience of the Court either to pronounce the judgment on the same day or reserve it to be pronounced on a future day. The matter passes on to the next stage from hearing when the hearing gets completed and the matter stands posted for argument. Hence the right to file petition under Order IX Rule 7 CPC, stands extinguished. The relevant paragraphs of the Judgment is extracted hereunder:-

"20.....Thus every contingency which is likely to happen in the trial vis-a-vis the non-appearance of the defendant at the hearing of a suit has been provided for and Order IX Rule 7 and Order IX Rule 13 between them exhaust the whole gamut of situations that might arise during the course of the trial.....We consider that the suggestion that there is such a stage is, on the scheme of the Code, wholly unrealistic. In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit:(1) where the hearing is adjourned or (2) where the hearing



C.R.P(PD).No.373 of 2022

is completed. Where, the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order IX Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order IX. Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order IX Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX. Rule 7".

21.....that power is to be exercised to secure the ends of justice. If at the stage of Rule 7 power is vested in the Court and after the decree is passed Order IX Rule 13 becomes applicable and the party can avail himself of that remedy, it is very difficult to appreciate the ends of justice which are supposed to be served by the



C.R.P(PD).No.373 of 2022

Court being held to have the power which the learned counsel says must inhere in it."

5.The above observations are applicable to the situation that has arisen and in the case in hand where the matter was posted "for judgment" on 20.10.2021.

6.Thus, the stage of the proceedings is shifted from the stage of hearing to the stage of judgment. That means no other proceedings are pending before the learned Judge and the person who was set ex-parte could not seek remedy under Order IX Rule 7 CPC. Then, the question would arise as to what is relevant for the person who has been set ex-parte in a matter which is reserved for judgment. Since the proceedings have shifted to the stage of judgment, the parties have got no other option except to wait still the judgment is pronounced and avail their remedy by way of either filing petition under Order IX Rule 13 CPC to set aside the ex-parte decree or by way of preferring an appeal by challenging the decree, depending on the result of the case.



C.R.P(PD).No.373 of 2022

WEB COPY

7.In view of the reasons stated above, this Civil Revision Petition is dismissed and the order of the learned I Additional District Judge, Coimbatore dated 22.12.2021 made in I.A.No.3 of 2021 in O.S.No.113 of 2015, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

14.07.2022

vk

Index:Yes No

Speaking Order:Yes/No

To

- 1.The I Additional District Judge,
Coimbatore.
- 2.The Section Officer,
VR Section, Madras High Court,
Chennai.



WEB COPY



C.R.P(PD).No.373 of 2022

R.N.MANJULA,J.

Vkr

C.R.P.(PD).No.373 of 2022
and C.M.P.No.1933 of 2022

14.07.2022