



C.R.P(PD) No.1903 of 2022 and

C.M.P.No.9702 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM

THE HONOURABLE MS. JUSTICE **R.N.MANJULA**

C.R.P(PD).No.1903 of 2022 and

C.M.P.No.9702 of 2022

Mr.M.Rajesh Khana

... Petitioner

Vs.

A.Gopal (deceased)

Mrs.M.Jayalakshmi (deceased)

1.Mr.M.Jaffir

2.Mr.M.Sithik

3.M.Banu

4.Mr.Gopalakrishnan

5.G.Parvathavarthini

6.G.Lakshmi

7.G.Sureshkumar

8.Mrs.Vijayakumar

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.12.2021, passed by the Hon'ble XVI Assistant City Civil Court, Chennai in I.A.No.3211 of 2016 in O.S.No.4759 of 2008.



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For Petitioner : Mr.P.V.Balasubramaniam

For Respondents : Mr.A.D.Janarthanan for R5 to R8

ORDER

This revision petition has been filed to set aside the order dated 10.12.2021, passed by the Hon'ble XVI Assistant City Civil Court, Chennai in I.A.No.3211 of 2016 in O.S.No.4759 of 2008.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 5 to 8.

3. The revision petitioner is the second defendant in the suit. The plaintiff has filed a suit for recovery of money against the second defendant along with the other defendants, in which, the second defendant remained exparte. However, the trial was conducted and thereafter, a decree was passed on 04.02.2015. Subsequently, the petitioner / second defendant has filed a petition to condone the delay of 347 days in filing the petition to set aside the exparte decree and filed a petition to set aside the exparte decree as against him.

4. The learned counsel for the petitioner submitted that despite trial



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was conducted and decree was passed, as against the second defendant the decree is still an exparte decree and the petitioner should be given with an opportunity to file a petition for setting aside the exparte decree.

5. The learned counsel for the respondents 5 to 8 submitted that the decree has been passed against the other defendants who had actively participated in the trial and hence, the decree cannot be called as an exparte decree and it cannot be set aside against the single defendant alone.

6. On perusal of the records, it is seen that the learned Trial Judge has passed a decree after examining the witnesses from both sides, even though the second defendant remained exparte. In such a context, the second defendant cannot seek to set aside the exparte decree as against him. The only remedy open to him against a speaking judgment is to challenge by preferring an appeal. However, it is upto him to prefer an appeal along with a petition to condone the delay in filing the appeal. Further, the defence or grounds of the revision petitioner cannot be made in a petition filed to condone the delay for filing a petition to set aside the exparte decree. The learned Trial Judge has



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rightly disallowed the petition. Therefore, I do not find any reasons for interfering in the order passed by the learned Trial Judge.

7. Accordingly, this civil revision petition stands dismissed and the order passed by the learned XVI Assistant Judge, City Civil Court, Chennai in I.A.No.3211 of 2016 in O.S.No.4759 of 2008 dated 10.12.2021, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2022

Index : Yes/No

Speaking or Non-speaking order
gsk

To
The XVI Assistant City Civil Court,
Chennai.

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