



C.R.P.No.3114 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3114 of 2022
and
C.M.P.No.16727 of 2022

T.Iyyapa Raj

... Petitioner

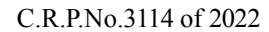
Vs.

1.C.A.Rajendran
2.Sathi Devi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this CRP and set aside the fair and decreetal order dated 29.03.2022 in I.A.No.1 of 2019 in O.S.No.1184 of 2013 passed by the learned V Assistant Judge, City Civil Court, Chennai and to dismiss the said I.A.

For Petitioner : Mr.J.Chandran Sundar
for Mr.V.Mythili Srinivas



The Civil Revision Petition is filed, challenging the order passed at below allowing the petition filed by the first respondent under Section 13 of CPC to set aside the ex parte decree passed by the Court

2. The learned counsel for the petitioner submitted that the impugned order is challenged mainly on the ground the decree passed by the Court below is on merits, therefore, the first respondent is not entitled to file an application under Order 9 Rule 13 of CPC, treating it as ex parte decree. He had also relied on the averments made by the first respondent in the affidavit filed in support of under Order 9 Rule 13 CPC, wherein they have mentioned that after setting the first respondent ex parte, the Court below relied on the evidence let in by the plaintiff and passed orders on merits.

3. The contention raised by the learned counsel for the petitioner cannot be accepted in the light of the explanation to the provision under Order 17 Rule 2 which is as follows:



“2. Procedure if parties fail to appear on day

fixed.-Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other orders as it thinks fit.

Explanation: Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.

4. A reading of under Order 17 Rule 2 of CPC and Explanation of Rule 2 would suggest that the Court may in its discretion proceed with the case as if such party were present provided substantial portion of the evidence, of any party has already been recorded. Even according to the learned counsel for the petitioner, the first respondent was set exparte. The first respondent has not let in any evidence. In the facts and circumstances of this case, the Court is not entitled to proceed treating him as present. Therefore, the decree passed against the first respondent is only an exparte



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decree and the same cannot be treated as the one passed on merits treating him as if he was present. Hence, the petition filed under Order 9 Rule 13 of CPC, is very much maintainable. The Court below after considering the reason assigned by the first respondent for his absence at the relevant point of time had exercised discretion in favour of the first respondent and allowed the petition to set aside the exparte decree. I do not find any illegality or irregularity in the order passed by the Court below.

5. Hence, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

29.09.2022
(½)

Index : Yes / No
Internet : Yes / No
dna



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To

The V Assistant Judge, City Civil Court, Chennai.



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S.SOUNTHAR, J.

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