



C.R.P. No. 555 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 555 of 2017

and

C.M.P. No. 2828 of 2017

1. D.Banu,

2. D.Madhusudanan

3. D. Thirivickaraman

... Petitioners

Versus

The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.

... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 22.07.2016 passed in I.A.No.15741 of 2015 in O.S.No. 4779 of 2009 by the VIII Asst. City Civil Judge, Chennai.

For Petitioners : Mr.S.Magesh for
Mr. A.M.Loganathan

For Respondent : Ms.K.Asmini Devi for
Ms. Karthikaa Ashok



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ORDER

WEB COPY The Revision Petitioners are the plaintiffs in the suit in O.S.No. 4779 of 2009, on the file of VIII Asst. City Civil Court, Chennai, which was filed for the relief of mandatory injunction and consequential injunction against the defendants.

2. The 5th defendant is the Commissioner, Corporation of Chennai, Chennai remained exparte without filing the written statement. The other defendants contested the suit and filed their written statement. To set aside the exparte order, the 5th defendant filed an application in I.A.No. 15741 of 2015 under Order IX Rule 7 of C.P.C. and the said application was filed by one V.Kumar, Junior Engineer on behalf of respondent. So, the revision petitioners raised objection that he has no locus standi to file the affidavit on behalf of 5th defendant. On considering submissions of both sides, the trial court allowed the application on payment of cost. Challenging the said order, the plaintiffs preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners submitted that the trial court failed to take note of the fact that originally Mr. J.S. Mahalingam filed



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vakalat as counsel for Commissioner, Corporation of Chennai and subsequently, he has not filed written statement, thereby the 5th defendant remained exparte for not filing written statement. Accordingly, they have filed the above application to set aside the exparte order without filing the written statement, besides the counsel for 5th defendant filed the affidavit, in which, the person, who sworn affidavit is not a right person to represent the Corporation of Chennai. Therefore, the order passed by the trial court is erroneous one and the same is liable to be set aside.

4. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondent and perused the records.

5. On seeing the facts and on perusal of records, it seems that the suit is filed in the year of 2009, in which, the defendants 1 to 4 filed their written statement and both side evidence was already over, but the 5th defendant, against whom, the prayer of mandatory injunction is claimed by the plaintiff. So, the 5th defendant has to necessarily file its written statement, but as on date, the 5th defendant remained exparte. The learned counsel for respondent submitted that due to change of circumstances in the list of official persons, there was a mistake inadvertently happened on their



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side by not filing written statement. Therefore, now a proper person praying one more opportunity to defend the case before the trial court.

5. On considering submissions of both sides as well as mistake committed by the counsel for Corporation of Chennai shall not be affected the rights of parties in the suit, this Court is inclined to grant liberty to the respondent/5th defendant to file its written statement within a period of two weeks through proper person from the date of receipt of copy of this order. Thereafter, the trial court is directed to proceed with the case, and dispose the same within a period of three months. In the result, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

29.09.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To
1. VIII Asst. City Civil Judge, Chennai.

2. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

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T.V.THAMILSELVI, J.

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