



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 19.04.2023	Orders Pronounced on 30.06.2023
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THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1948 of 2020
and C.M.P.No.12039 of 2020

S.Krishnan

.. Petitioner

Vs.

1.C.Lakshmanan
2.C.Manibharathi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 23.01.2020 in I.A.No.3 of 2020 in O.S.No.449 of 2014 on the file of the learned 1st Additional District and Sessions Judge, Coimbatore.

For Petitioner	: Mr.D.Nandagopal for Mr.R.Rajarajan
For Respondent 1	: Mr.C.R.Prasanan
For Respondent 2	: No appearance

ORDER

This Civil Revision Petition had been filed to set aside the fair and decretal order dated 23.01.2020 dismissing the I.A.No.3 of 2020 in O.S.No.449 of 2014 on the file of the learned 1st Additional District and



Sessions Judge, Coimbatore.

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2. The learned Counsel for the Revision Petitioner expressed his apology for his non-appearance on the previous date of hearing.

3. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the 2nd Defendant in the suit in O.S.No.449 of 2014 on the file of the learned I Additional District and Sessions Judge, Coimbatore. It is his contention that the Revision Petitioner is impleaded as 2nd Defendant in the suit in O.S.No.449 of 2014. He is the purchaser of the suit property in item '3' of the plaint schedule. The 2nd Defendant is not aware of the joint venture agreement entered into between the 1st Defendant and the Plaintiff. The learned Counsel for the Revision Petitioner further contended that the 1st Defendant and the Plaintiff had entered into joint venture agreement, which is an unregistered document. The Petitioner is aged 75 years. Also, he is residing 75 kms away from the Court. Therefore, he was unable to attend Court on every date of hearing. He was relying on his Counsel. The fact that the Revision Petitioner herein as 2nd Defendant in the suit in O.S.No.449 of 2014 was set *ex parte* was known to the 2nd Defendant very late. By the time, he came to know that he was set *ex parte*,



immediately he filed a petition under Order IX Rule 7 of CPC in I.A.No.3 of 2020 in O.S.No.449 of 2014. The Respondents objected stating that the petition had been filed after 4½ years after the 2nd Defendant was set *ex parte*. The learned Counsel for the Revision Petitioner contended that there had been communication gap between him and his earlier Counsel. The earlier Counsel had not informed him about the fact that he was set *ex parte*.

4. On coming to know that the Revision Petitioner as 2nd Defendant in the suit was set *ex parte*, immediately, he had filed an application in I.A.No.3 of 2020 in O.S.No.449 of 2014 after changing his Counsel. If the suit is decided without hearing the Revision Petitioner herein as 2nd Defendant in the suit, it will end up in miscarriage of justice and also lead to multiple proceedings. To avoid such exigency, the learned Counsel for the Revision Petitioner seeks to set aside the order of dismissal in I.A.No.3 of 2020 in O.S.No.449 of 2014, on the file of the learned I Additional District and Sessions Judge, Coimbatore, dated 23.01.2020.

5. The learned Counsel for the 1st Respondent submitted that Article 137 of the Limitation Act is not applicable to the facts of this case. The suit is filed in the year 2014. Written statement was filed by the 2nd



Defendant along with typed set of papers. The 2nd Defendant is stated to have purchased the property from 1st Defendant. The 1st Defendant had already filed written statement. 2nd Defendant is the Revision Petitioner herein. The 2nd Defendant had raised the defence almost similar to 1st Defendant. The 2nd Defendant cannot go beyond what is claimed by the 1st Defendant.

6. The learned Counsel for the Respondents invited the attention of this Court to the contents of the written statement filed by the 1st Defendant on 07.03.2015. He also invited the attention of this Court to the dates drawn from the Court diary. The 2nd Defendant had kept quite for 4 ½ years. It is to be noted that the 1st Defendant and 2nd Defendant engaged the same Counsel.

7. The learned Counsel for the Respondents also invited the attention of this Court to the typed set filed by them. The learned Counsel for the Respondents submitted that the Respondents typed set of papers contains the copy of the affidavit of the Plaintiff as “examination-in-chief” of P.W.1, which also contains date on which he was cross-examined by the learned Counsel for the 1st Defendant. It also contains the affidavit filed by the 1st



Defendant in O.S.No.449 of 2014 on the file of the learned I Additional District and Sessions Judge, Coimbatore, as “examination-in-chief” of D.W.1, which was filed on 16.08.2019. He is to be cross-examined. At that stage, the 2nd Defendant in the suit had filed a petition to set aside the *ex parte* order in I.A.No.3 of 2020 in O.S.No.449 of 2014 against him, which was dismissed by the learned I additional District and Sessions Judge, Coimbatore, by order dated 23.01.2020. Therefore, the 2nd Defendant in O.S.No.449 of 2014 had preferred this Civil Revision Petition and obtained stay. Therefore, the proceedings had been stayed and the suit could not be disposed of.

8. The learned Counsel for the Respondents also invited the attention of this Court to the contents of the affidavit filed by the Revision Petitioner herein as Applicant in I.A.No.3 of 2020 in O.S.No.449 of 2014 in Page No.17 of the typed set of papers in Paragraph No.3 wherein, it is stated as follows;-

“ On the other hand, when the above suit stood posted on 18.03.2015 for filing my written statement. Owing to the above said reasons, I was not able to appear before this Hon'ble Court on that day; and therefore, this Hon'ble Court was pleased to pass an order setting me ex parte on 18.03.2015.”

<https://www.mhc.tn.gov.in/judis> Now, the suit had reached the stage of cross-examination of D.W.1.



Therefore, the 2nd Defendant can participate only at the stage of Defendants evidence.

9. The learned Counsel for the Respondents also invited the attention of this Court to the order passed by the learned I Additional District and Sessions Judge, Coimbatore, dismissing the application in I.A.No.3 of 2020 in O.S.No.449 of 2014. It holds good. Therefore, the order passed by the I Additional District and Sessions Judge, Coimbatore, does not warrant any interference by this Court under Section 115 of the Code of Civil Procedure and therefore, this petition is to be dismissed.

10. As per Order IX, Rule 7 of the Code of Civil Procedure, it provides that in a situation where the Court has adjourned the hearing of the suit *ex parte* and the Defendant provides a good cause for his absence, the Court, on its terms and condition, may hear him and deal with the suit as if he had appeared on the date fixed for hearing.

11. The learned I Additional District and Sessions Judge, Coimbatore, had discussed about the application of Limitation Act under Article 137. As per the ruling reported in **2015 (5) CTC 67** in the case of **Visalakshi Vs.**



Umapathy & Others, wherein it is stated as follows;-

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“Limitation prescribed under Article 137 would apply to all applications filed before Civil Court under Civil Procedure Code- Application filed to set aside ex parte order under Order 9 Rule 7 of C.P.C-after lapse of three years is barred by Limitation.”

12. Also in another ruling reported in **2016 (6) CTC 209** in the case of **Satbir Singh Bakshi Vs. Saroja & Others** and **2018 (3) MWN (Civil) 577** in the case of **Swaminathan & another Vs. Esakkidoss**, wherein it is observed as follows;-

“ There is no limitation prescribed to set aside ex parte order under Order IX, Rule 7 of C.P.C.”

Therefore, the order dismissing the petition under Order IX, Rule 7 of C.P.C., does not warrant any interference by this Court.

13. On perusal of the affidavit filed by the Petitioner, counter affidavit filed by the Respondents, the order passed by the learned I Additional District and Sessions Judge, Coimbatore, in I.A.No.3 of 2020 in O.S.No.449 of 2014 dated 23.01.2020 and the grounds of revision, it is found that the learned I Additional District and Sessions Judge, Coimbatore, having discussed that the Limitation Act is not applicable to this case and Order IX Rule 7, petition can be filed at any stage of the proceedings in the suit. He



ought not to have dismissed the petition. Instead he could have allowed the 2nd Defendant to participate in the proceedings at the stage of cross examination of D.W.1. At that stage, he could file written statement alone and argue his case and he cannot revert back to the stage of P.W.1 cross-examination, he can participate in the proceedings by filing written statement by himself, 2nd Defendant and let in evidence and subject himself to cross examination by Plaintiff Counsel as well as the Counsel for the 1st Defendant if the 1st Defendant so desires. Having been set *ex parte* at the stage of filing written statement. Now, if he is permitted to participate in the proceeding, he has to file written statement at the stage of evidence of Defendants. The evidence of the Defendants had not been completed and first Defendant as D.W.1 is in the witness box. Therefore, as per Section 151 of the Code of Civil Procedure, the Petitioner herein as 2nd Defendant in the suit had to be afforded an opportunity. He cannot seek cross-examination of Plaintiff as P.W.1 he can seek cross examination of first Defendant as D.W.1 subject to filing of written statement of 2nd Defendant.

14. The learned Counsel for the Respondents relied upon the ruling reported in ***1925 SCC Online Mad 355 = AIR 1925 Mad 1274*** in the case of ***(Gokarakonda) Venkatasubbiah Vs. Daliparthi Lakshminarasimham,***



wherein it is stated as follows;-

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“ 7. In the present case, if the plaintiff had closed his case, and the Petitioner had been called upon to produce his case, and he was absent and therefore, made ex-parte as regards the presentation of his case, I take it that he would not be allowed to come on later unless he got the ex-parte order set aside under O. 9 R. 7. But if the plaintiff had closed his case and the Petitioner had not been called upon to produce his case, there could be no ex-parte order against him with reference to his presentation of his case, which has to be set aside. Therefore, he could appear and go on with his case on the adjourned date from the stage at which it stood.”

15. The learned Counsel for the Respondents also relied upon the ruling reported in **1949 (1) MLJ 147** in the case of ***Kodi Makku Naicker & Another Vs. Agathiappa Gounder and Others***, wherein it is stated as follows;-

“ but we feel that the rule laid down by Wallace,J., supports the conclusion we have arrived at from a reading of Order 8, Rules 1 and 9 of the Civil Procedure Code, to which Varadachariar,J., made no reference. Wallace,J., held in effect that the defendants could participate in the future proceedings of the Court, but not in what was past. Since the stage for the filing of the written statement and the framing of issues had been passed, no fresh written statement could be filed as of right.”

16. The learned Counsel for the respondents further relied upon the rulings reported in **1953 SCC Online All 239 = AIR 1954 All 631** in the case of ***Deo Nand Vs. Achaiber Misir and Others***, wherein, it is stated as follows;-



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“ 7. Another case relied upon by the learned Counsel for the applicant is that reported in – '**Radhabai V. Anant Pandurang**', **AIR 1922 Bom 345(1)(D)**. In that case the Court passed an order directing the case to proceed 'ex parte' against defendant No.4. The said Defendant put in appearance then and there but he was not allowed to take part in the proceedings. The High Court set aside that order. That case also is distinguishable because in that case also the defendant could proceed from the stage the case had reached and had not to retrace its steps. It may be pointed out that in this case their Lordships observed as follows;-

“But if he (defendant) does not appear before the suit is heard then he has not right to be heard.”

17. The learned Counsel for the respondents further relied upon the ruling reported in **1955 (2) SCR 1 = AIR 1955 SC 425** in the case of **Sangarm Singh Vs. Election Tribunal, Kotah and Another**, wherein, it is stated as follows;-

“35. Now, this is not a case in which the defendant with whom we are concerned did not appear at the first hearing. He did. The first hearing was on 11.12.1952 at Kotah. The appellant (the first defendant) appeared through Counsel and filed a written statement. Issues were framed and the case was adjourned till 16th March at Udaipur for the Petitioner's evidence alone from 16th to 21st March. Therefore, Order 9 Rules 6 and 7 do not apply in terms. But we have been obliged to examine this Order at length because of the differing views taken in the various High Courts and because the contention is that Order 17 Rule 2 throws one back to the position under Order 9 Rules 6 and 7 and there, according to one set of views, the position is that once an ex parte “order” is “passed” against a defendant he cannot take further part in the proceedings unless he gets that “order” set aside by showing good cause under Rule 7. But that is by no means the case.”



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18. The learned Counsel for the Respondent also relied upon the ruling reported in **1998 (2) LW 271** in the case of **K.R.Chinnathambi Gounder Vs. Bhanumathy and 4 Others**, wherein, it is stated as follows;-

“Civil Procedure Code, O. 9, R. 7 – suit for declaration and permanent injunction -2nd defendant set ex parte for non-filing of written statement – contest by the 1st defendant alone – Petition to set aside ex parte order filed by 2nd defendant, filed after five years dismissed – Object of filing a fresh written statement by the Petitioner, held, could be to raise new plea – The applicant has failed to show good cause, and suppressed fact of filing counter in the application filed for violation of injunction – There is no reason why he did not pursue the matter for about five years – The act of Petitioner is only to drag on the proceedings which should not be allowed by the Court.”

19. The learned Counsel for the Respondents also relied upon the ruling reported in **2013 SCC Online Del 639** in the case of **Vikas Dedeech Vs. Richlook Garments (P) Ltd.**, wherein, it is stated as follows;-

“20. The conduct of the petitioner is such that despite being aware of the pendency of the case, plaintiff's evidence being already led and closed, he failed to wake up and when the case was just at the stage of final arguments, he filed this application praying for a relief which was not available to him in view of the provisions of Order VIII Rule 1 CPC.

21. The contention of learned counsel for the petitioner that good cause shown by the petitioner in his application under Order IX Rule 7 CPC should be construed liberally, does not come to his rescue for the simple reason that lame excuses have been taken by the petitioner like blaming the counsel for non-appearance, having ample time to attend the business activities but no time to take part in the proceedings going on before the Trial Court either through counsel or by inspecting the record. It is also matter of common knowledge that cause-list and all the proceedings as well as orders



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of the District Courts can be accessed through Internet. The defendant could have accessed the status of the case through Internet and taken timely action or at least could have taken part in the proceedings by cross examining the plaintiff. He remained busy in the business and perhaps did not consider it necessary to ensure that he is properly represented during the trial through his counsel. This shows that he had absolutely no cause what to talk of good or sufficient case for setting aside the exparte order.

19. In view of above discussion, since the impugned order does not suffer from any infirmity or illegality, the present petition is hereby dismissed.”

20. The learned Counsel for the Respondents also relied upon the ruling reported in **2007 SCC Online Ker 57 =AIR 2007 Ker 301** in the case of **C.L.Cleetus Vs. South Indian Bank Ltd & Another**. The subject matter of the dispute is with regard to petition under Order IX, Rule 7 of CPC which was dismissed by the trial Court/Executing Court. The facts of the reported ruling will not help the Respondent's case. Hence, it is rejected.

21. The learned Counsel for the Respondents also relied upon the ruling reported in **2015 (5) CTC 67** in the case of **Visalakshi Vs. Umapathy**, wherein it is held as follows;-

“Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 7 – Limitation Act, 1963 (36 of 1963), Article 137 – Ex parte Order – Application filed to set aside ex parte order – Defendant set ex parte for non-appearance – Whether limitation of three years as prescribed under Article 137 of Limitation Act would apply – Defendant set ex parte in year 2009 and Application to set aside ex parte Order filed in the year 2013 – Limitation prescribed under



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Article 137 would apply to all Applications filed before Civil Court under Civil Procedure Code – Article 137 would apply to Petition filed under Order 9, Rule 7 of CPC – Application filed to set aside ex parte Order after lapse of three years is barred by limitation”

22. The learned Counsel for the Respondents further relied upon the ruling reported in **2006 (1) LW 790** in the case of **Rajaji Vs. R. Krishnaji**, wherein, it is stated as follows;-

“Limitation Act (1963), Schedule, Articles 137, 122, CPC., Order 9, Rule 9, Order 40, Section 115 – Revision against order of lower court declining to set aside ex parte order appointing Receiver of the suit property – Application to set aside ex parte order filed after four months was dismissed by lower court on the ground that the petition was filed beyond thirty days of the order and that the application to set aside the ex parte order ought to have been filed within thirty days from the date of order and the application filed beyond thirty days is not maintainable – Held: Art. 123 speaks of a Decree passed ex parte and not an ex parte order – Legislature has maintained the difference between - “Decree and Order”; and Art.123 shall apply only to ex parte decrees or ex parte orders having the force of Decree or Order which finally determines the right of the parties.

Prescribed period of limitation for an application under Order 9, Rule 13 CPC, for setting aside an ex parte Decree is thirty days, but not for an application to set aside an ex parte order, with the result that an application for setting aside the ex parte order shall be governed by the residuary clause contained in Art.137 of the Limitation Act – When Art. 123 applies only to ex parte decree, the lower court was not right in finding that the application filed under Order 9, Rule 7 CPC beyond thirty days is not maintainable – Hence, the impugned order cannot be sustained – C.R.P. Allowed”

23. The learned Counsel for the Respondents also relied upon the

decision of the Delhi High Court in the case of **Sarjo Devi @ Saroj Vs.**

<https://www.mhc.tn.gov.in/judis>



Dharampal (Deceased) Thr Lrs and Others, wherein, it is stated as follows;-

*“34. Since no limitation is prescribed under Order 9 Rule 7 C.P.C., like that of Order 9 Rule 13 as observed in Rajaji's case as well as in Vikas Dedeech's case (Delhi High Court), the provisions under **Article 137** being residuary provision alone would be made applicable and therefore, under **Article 137** of the **Limitation Act**, the period of limitation is prescribed as three years and since the application in I.A.No.87 of 2013 has been filed after the period of three years, it is squarely barred by limitation under **Article 137** of the **Limitation Act**, 1963, as rightly concluded by the learned trial Judge, which according to this Court, does not require any interference and therefore, the revision petition deserves to be dismissed.”*
(emphasis supplied)

24. On consideration of rival submission and perusal of the order passed by the learned I Additional District and Sessions Judge, Coimbatore, it is found that the learned I Additional District and Sessions Judge, Coimbatore, had discussed about the application of Order IX, Rule 7 and non-application of the Limitation Act.

25. Order IX, Rule 7 of the Code of Civil Procedure is invoked only in circumstances when the suit proceeding is pending before the Trial Court. Therefore, at any stage of the Trial, Order IX Rule 7 can be invoked before pronouncement of judgment.



26. Here, in this case by the time the 2nd Defendant had filed I.A.No.3 of 2020 in O.S.No.449 of 2014, the proceedings in the suit had reached the stage of part heard Trial where Plaintiff evidence was closed and the 1st Defendant as D.W.1 had filed an affidavit as “examination in chief” he is to be cross examined by the learned Counsel for the Plaintiff. At that stage, the 2nd Defendant had filed I.A.No.3 of 2020 in O.S.No.449 of 2014 under Order IX Rule 7 he had offered his explanation for his absence on the previous hearing. He came to know that he was set *ex parte* only very late it was a communication gap between him and his Counsel. Therefore, he had changed the Counsel. Under those circumstances, the submission of the learned Counsel for the Respondents that the Defendants 1 and 2 had engaged the same Counsel is found justifiable and acceptable. At the same stage, whether the 2nd Defendant is to be considered as sailing along with 1st Defendant or as independent written statement is to be decided by him alone. At that stage, if he had changed his Counsel he is entitled to file written statement and proceed with his evidence. Without written statement he cannot let in evidence. As the Civil Procedure Code placed that without pleadings there cannot be evidence in a civil proceeding. Therefore, the stage of the suit is on the evidence of 1st Defendant. Now the 2nd Defendant had entered appearance, he is to be given a chance to file written statement



for himself. If he is adopting the written statement of the 1st Defendant he is within his discretion to file a memo stating that he adopts the written statement of the 1st Defendant. Now the 1st Defendant as D.W.1 had filed affidavit as “examination in chief”. Therefore, only after filing written statement by the 2nd Defendant whether the 2nd Defendant intends to cross examine the 1st Defendant as D.W.1 is to be decided by the Court and also by the 1st Defendant. Any how under Section 151 of C.P.C., the Court has a power to render justice.

27. As per the reported rulings cited by the learned Counsel for the Plaintiff, who is the Respondent in the Revision Petition Order IX Rule 7 Code of Civil Procedure permits the Defendants to participate in the proceedings of the suit in the stage at which Order IX Rule 7 is filed. Therefore, to participate in the proceedings the 2nd Defendant is to be given a chance to file his written statement and to proceed with either cross examination of D.W.1 or to let in evidence by the 2nd Defendant as D.W.2. No prejudice will be caused to the Plaintiff by allowing the 2nd Defendant to file written statement. In the interest of justice, the 2nd Defendant is to be given a chance to participate in the proceedings and his role is limited. He cannot cross examine P.W.1 or recall P.W.1 or P.W.2 at this stage as the



suit had reached the stage of Defendants evidence.

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28. In the light of the above discussion, the order passed by the learned I Additional District and Sessions Judge, Coimbatore, dismissing the petition filed under Order IX, Rule 7 on the ground that it has been filed belatedly after a period of 4 ½ years is set aside on the ground that the reasons stated by the 2nd Defendant as Revision Petitioner herein in his affidavit before the Trial Court in I.A.No.3 of 2020 in O.S.No.449 of 2014 is found acceptable, considering his age and the place of his residence far away from Coimbatore. Therefore, it is found acceptable that he was depending on his Counsel and he was not appearing before the trial Court for every hearing. He was expecting the Counsel will inform him the stage of the case, but the Counsel did not do so. He came to know about the fact that he was set *ex parte* only from the 1st Defendant. Under those circumstances, invoking powers of this Court under Section 151 of C.P.C., the learned Judge ought to have allowed the petition under Order IX, Rule 7 of C.P.C. with a specific order that he cannot recall or cross examine P.W.1 and P.W.2. Instead he had dismissed the petition. Therefore, that part of the order is to be set aside.



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29. In all the rulings cited by the learned Counsel for the Respondent, it is stated that petition under Order IX, Rule 7 of C.P.C. can be filed before the Court concerned, if the proceedings are pending and Limitation Act will not apply to the petition under Order IX, Rule 7 of C.P.C. At the same time, it is interpreted in all those rulings that it does not mean that a petition under Order IX, Rule 7 of CPC can be filed at any time, meaning that the petition under Order IX, Rule 7 of CPC can be invoked only in the pending proceedings in the suit. It distinguishes between the petition under Order IX, Rule 13 of CPC and petition under Order IX, Rule 7 of CPC.

30. In this case, the learned Counsel for the Revision Petitioner had stated that the Revision Petitioner was a senior citizen, who was residing far away from the court premises ie., 75 kms from the Court. Due to his old age and health status, his earlier Counsel had informed him that he will inform the stage of the case and he need not appear for every hearing. Believing the words of the earlier Counsel, the Revision Petitioner had not attended the Court. Later on, he came to know that he was set *ex parte*. Immediately, he filed a petition to set aside the *ex parte* order passed against him. By the time he had filed petition to set aside the *ex parte* order, the suit had proceeded at the stage of D.W-1 cross-examination. Therefore, he had



filed a petition under Order IX, Rule 7 of CPC seeking to set aside the *ex parte* order passed against him. This is the circumstances which the Revision Petitioner had clearly stated in his affidavit. Therefore, the rulings cited by the learned Counsel for the Respondent will not hold good. Once *ex parte* order is passed, the Revision Petitioner can participate in the proceedings only from the stage of D.W.1 evidence and he cannot apply for recall of the Plaintiff side witnesses. He can participate in the proceedings even in the argument stage. While so, the reported rulings relied on by the learned Counsel for the Respondent is not applicable to the facts of this case and hence rejected.

31. In the light of the above discussion, the Petitioner is granted a chance to participate in the proceedings by filing written statement on his behalf as 2nd Defendant in the suit and to cross-examine D.W.1 and also to let in evidence as D.W.2 in the suit. Accordingly, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents.



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In the result, **this Civil Revision Petition is allowed**. The learned I Additional District and Sessions Judge, Coimbatore, is directed to permit the Petitioner as 2nd Defendant in the suit to file his written statement, within a period of one month from the date of receipt of a copy of this order and proceed accordingly with the disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Section Officer,
V.R.Section, Madras High Court,
Chennai – 600 104.



C.R.P.No.1948 of 2020

SATHI KUMAR SUKUMARA KURUP., J.

At the time of pronouncing the order, the learned Counsel for the Respondents objected to the final part of the order whereby **“the learned First Additional District and Sessions Judge, Coimbatore is directed to permit the second Defendant in O.S.No.449 of 2014 to file written statement within a period of one month from the date of receipt of copy of this order.”**

2.This portion of the order is objected by the learned Counsel for the Respondents stating that under Order IX, Rule 7 of CPC if the *ex parte* order passed against the Revision Petitioner is set aside, he should be permitted to participate in the proceedings at the stage of the suit where it had reached. Now the suit had reached the stage of D.W-1 in the box. Therefore, he can be permitted to participate alone.

3.The objection of the learned Counsel for the Respondents/Plaintiffs is rejected as in the earlier part of the order it had been clearly stated that the Petition in I.A.No.3 of 2020 filed by the second Defendant was filed after 4½ years from the date when he was set *ex parte*. By the time he came to know about the proceedings, the suit had reached the stage of witness of



first Defendant as D.W-1 and he had filed affidavit as examination in chief of D.W-1. Therefore, if the Petition filed by the second Defendant to set aside the *ex parte* order is allowed, he is permitted to file written statement regarding his part of the explanation to the suit. At the same time, it is made clear in the earlier part of the order that he does not have the right to recall Plaintiff witnesses as the Plaintiff evidence had been closed already.

4. Now if the right of the second Defendant to file written statement is curtailed, this order becomes a nullity. It has no difference between the order passed by the learned First Additional District and Sessions Judge, Coimbatore dismissing the Petition and now the Petitioner having been allowed, it does not make difference. Therefore, he should be given a chance to offer his explanation to the Plaintiffs' averments. Only then, the second Defendant will be able to put his evidence. Without pleadings, the observation of this Court “the second Defendant is permitted to participate in the suit proceedings will be an empty formality.” Therefore, the objection by the learned Counsel for the Respondents is rejected. The same order holds good.

30.06.2023

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SATHI KUMAR SUKUMARA KURUP., J.



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Order made in
C.R.P.No.1948 of 2020

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