



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

THE HON'BLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

C.R.P.No.3741 of 2019

Abdur Rahman

... Petitioner

Vs.

M.Sankaralingam (Deceased)

1. Kanmani
2. S.Rameshkumar
3. Udayakumar
4. Dominic Kalaimani

... Respondents

PRAYER:- This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the judgment and decree dated 02.01.2019 passed by the learned II Judge, Court of Small Causes at Chennai, in M.P.No.4396 of 2018 in Ejectment Suit No.2 of 2008.

For Petitioner	:	Mr.J.Surya Narayanan
For Respondents	:	No appearance.

ORDER

This civil revision petition has been filed challenging the order dated 02.01.2019 passed by the II Judge, Court of Small Causes, Chennai in M.P.No.4396 of 2018 in Ejectment suit No.2 of 2008.



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2. The learned counsel appearing for the petitioner submitted that during the trial, the defendant died on 30.12.2017 and a memo to that effect was filed on 12.02.2018. In the application filed for condoning the delay in setting aside the abatement, the date of demise of the defendant is wrongly mentioned as 12.02.2018 instead of 30.12.2017.

3. The trial Court passed an order dated 02.01.2019 in M.P.No.4396 of 2018 in Ejt.Suit No.2 of 2008 and the relevant paragraph is extracted hereunder:-

"8. On 30.11.2018 after the counter was filed these defects were pointed out to the counsel for the petitioner. He sought time and therefore it was adjourned to 01.12.2018 on which date he again sought time. The submission of the respondent were heard. On 11.12.2018 this Court again asked the counsel for the petitioner to clarify as to how he arrived at 197 days as delayed and the averment made in para 5. He first submitted that it is found in CPC and based on this only he has stated that the legal heirs was brought on record within 30 days. Then he said it is in the Limitation Act and the same can be read by the Court. He was not in a position to explain the averments made in the affidavit. He did not even have the inclination



to read the book and learn the proposition even after opportunity was given to him and take steps to rectify the same. Instead he had asked the court to read limitation act for itself and pass orders. This is not proper advocacy and is not the way to represent his case. This also shows the intention of the counsel in refusing to place proper facts before the court. As the date of death itself has been wrongly given, either intentionality or otherwise, this court is of the view that the application cannot for any reason be allowed because it would tantamount to accepting the wrong date of death and this mistake would be automatically be carried on to the application to set aside the abatement, bringing on record the Legal heirs and the consequential amendment application."

4. In the civil revision petition, the Court notice was served on 25.10.2023 and private notice was served on 26.08.2023 on the respondents, but, none appeared on behalf of the respondents.

5. Heard the learned counsel for the petitioner and perused the materials available on record.



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6. In the case on hand, it is an admitted fact that the first respondent/defendant had died on 30.12.2017 and a memo to that effect was also filed on 12.08.2018. The application for condoning the delay in setting aside the abatement was filed on 28.09.2018. But in the application filed for condoning the delay, the date of demise of the defendant was wrongly mentioned as 12.02.2018. The plaintiff's evidence is over and during the defendant's side evidence, an affidavit was also filed. The first defendant's cross-examination was over and the matter was posted for further cross- examination of DW1. As already indicated, since the first defendant passed away on 30.12.2017, the trial Court dismissed the above application as observed above.

7. It is clearly evident that due to the mistake of the counsel representing the petitioner, the trial court has passed the said order.

8. In view of the above facts and circumstances of the case, the judgment and decree dated 02.01.2019 passed in M.P.No.4396 of 2018 in Ejectment Suit No.2 of 2008 by the II Court of Small Causes, Chennai, is hereby set aside by this Court.



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9. In the result, this civil revision petition stands allowed. No costs.

Index : No
Internet : Yes
kmm

20.11.2023

To
The II Judge, Court of Small Causes at Chennai

J. SATHYA NARAYANA PRASAD, J.

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