



C.R.P. No.3900 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3900 of 2023
and
CMP.No.24643 of 2023

H.Obaidur Rahman

... Petitioner

Versus

Y.Taj

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 21.07.2023 made in I.A.No.1 of 2022 in O.S.No.1430 of 2021 passed by the learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. A.G.F. Terry Chella Raja

ORDER

The petitioner has filed this petition to set aside the order dated 21.07.2023 made in I.A.No.1 of 2022 in O.S.No.1430 of 2021 passed by the learned XV Assistant Judge, City Civil Court, Chennai.



C.R.P. No.3900 of 2023

2. Before the trial Court the respondent / plaintiff has filed the suit in

O.S.No.1430 of 2021, for the relief of directing the defendant to pay to the plaintiff a sum of Rs.3,20,375/- with interest at the rate of 18% per annum and other consequential reliefs. On 07.09.2022, an ex-parte order was passed against the petitioner/defendant. Immediately, within a period of 2 weeks, the petitioner has filed an I.A.No. 1 of 2022 in O.S.No.1430 of 2021, under Order IX Rule 7 of CPC to set aside the ex-parte order passed against him, and the same was dismissed. The trial Court held that since at the time of Cross- examination of P.W.1, there was no representation for the petitioner/defendant, there is no merit in the application and accordingly, dismissed I.A.No.1 of 2022.

3. The learned counsel for the petitioner submitted that on 07.09.2022, he appeared through his respective counsel and his counsel sought time to cross-examine P.W.1, but the learned trial Judge erroneously concluded that on that day there was no representation for the petitioner at 3.50 p.m.



C.R.P. No.3900 of 2023

4. On perusal of the E-courts status dated 07.09.2022, it reveals that, the defendant counsel sought time to cross-examine P.W.1. So, there was representation on the side of the defendant, but the trial court erroneously made an observation that there was no representation at afternoon 3.50 p.m. Therefore, the findings given by the learned trial Judge is erroneous. If an opportunity is not given to the petitioner/defendant to contest the case before the learned trial Judge, it will lead to miscarriage of justice. Therefore, the order passed by the learned trial Judge in I.A.No.1 of 2022 in O.S.No.1430 of 2021 is set aside. Further, the petitioner/defendant is directed to co-operate for the proceedings.

5. Accordingly, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

09.11.2023

Index : Yes / No
Neutral Citation: Yes / No
Speaking/Non-speaking order

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3/4



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C.R.P. No.3900 of 2023

T.V.THAMILSELVI, J.
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C.R.P. No.3900 of 2023
and
CMP.No.24643 of 2023

09.11.2023