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C.R.PD.No.3601 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 7/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.3601 of 2022

a n d

C.M.P.No.19106 of 2022

Niketa M. Gandhi ... Petitioner

Vs

1. A. Anuradha

2. India SME Asset Reconstruction

Company India Limited

rep. By its Chief Manager

Harshad V. Garude

Mumbai 400 051.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the learned VI Additional City Civil Court, Chennai in I.A.No.6 of 2022 in O.S.No.1238 of 2019 dated 26/10/2022.

For Petitioner ... Mr.S.Parthasarathy
Sr. Advocate

For respondents ... Mr.R.Thiagarajan
for R.1

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ORDER

This Civil Revision Petition is filed by the defendant in O.S.No.1238 of 2019 to set aside the fair and decreetal order, passed by the learned VI Additional City Civil Court, Chennai in I.A.No.6 of 2022, dated 26/10/2022.

2. The facts in brief are that the first respondent/plaintiff has filed a suit for recovery of Rs.47,88,815/- against the petitioner/first defendant. Since, the petitioner/first defendant was set ex parte, on 17/7/2019, she has filed an application for setting aside the ex parte order, alleging that the petitioner got the knowledge about the suit only, on 26/4/2022 and her non appearance is not willful.

3. On the other hand, it is the submission of the first respondent/plaintiff that the petitioner has got knowledge about the pendency of the suit and I.A.No.6 of 2022 was filed, under Order IX Rule 7 of the Code of Civil Procedure after posting the matter for judgment and thereby, the application filed under Order IX Rule 7 of the Code of Civil Procedure cannot be entertained.



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4. The question for consideration in this revision is whether the application filed by the petitioner/defendant, seeking to set aside the ex parte order passed against the petitioner/defendant, on 17/7/2019, can be entertained, on account of the fact that the matter is stated to have been posted for judgment.

5. Order IX Rule 7 of the Code of Civil Procedure is extracted below for ready reference.

“Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance - Where the Court has adjourned the hearing of the suit, ex parte and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his



appearance.”

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6. On going through Order IX Rule 7 of the Code of Civil Procedure, it is clear that when the case has been adjourned for hearing, if the first defendant makes an application by showing a reasonable cause, the Court can consider for setting aside the ex parte. In the case on hand, the first defendant was set ex parte, the trial Court has posted the matter for hearing and plaintiff's evidence was recorded and the matter was posted for judgment.

7. Considering the above, it is difficult to appreciate the contention of the learned counsel for the petitioner/first defendant that the application filed under Order IX Rule 7 of the Code of Civil Procedure lies, in the circumstances of the facts of the case.

8. The learned counsel appearing for the first respondent cited the following judgments, to substantiate his case.

(i). In ***ARTI SUKHDEV KASHYAP & OTHERS Vs. SH.DAYA***

KISHORE ARORA DRJ 1992 (24) – 285, it has been held as follows:-



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“When once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the hearing is completed. Where hearing is completed the parties have no further right or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order IX Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order IX Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under—Order IX Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it



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necessary, for the court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7. As provision has been made for every contingency. there is no scope for the invocation of the inherent powers of the Court to make an order necessary for the ends of justice.”

(ii). In ***JYOTI DEVI Vs. LD.MUNSIFF, BASOHLI AND ANOTHER 2014 SCC OnLine J&K 186***, wherein at paragraph No.6, it has been held thus:-

“6. The question arising in this petition is no more res integra as far as this Court is concerned. An application by the defendant for setting aside ex parte proceedings, which lies under Order 9, Rule 7, CPC, can be moved during the course of hearing of the suit, that is, after the defendant is set ex parte till hearing of final arguments in the suit. However, neither an application under Order 9, Rule 7 of the CPC would



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lie nor ex parte proceedings can be set aside after final arguments in the case are heard and order reserved. Remedy available to the defendant in that case is only to file an application for setting aside the ex parte judgment and decree under Order 9, Rule 13, CPC, if the suit is decreed against him. This view is ascertainable from the judgment of the Supreme Court in *Arjun Singh v. Mohindra Kumar*, AIR 1964 SC 993. This Court in *Suman Sharma v. Bhupinder Singh*, 2005 (2) JKJ 473, while relying upon *Arjun Singh's case* (supra) has held:

“In view of the ratio of the aforesaid judgment and keeping in view the provisions of Order 9, R. 7 of the CPC the only remedy available to the defendant against whom ex parte proceedings had been initiated and case reserved for final judgment is to seek setting aside of the ex parte decree in the



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event any decree is passed by invoking the provisions of Order 9, Rule 13 of the CPC. The provisions of O.9, R. 7 cannot be invoked in such a situation where the case is reserved for judgment.....”

(iii). In ***MAMITA THATI Vs. NEPURA PRADHAN (AIR 2014 ORISSA – 79)***, it has been held as follows:-

12. In the case of *Arjun Singh v. Mohindra Kumar*, AIR 1964 SC 993, the Hon'ble Supreme Court held thus : -

“The opening words of that rule are, as already seen, ‘Where the Court has adjourned the hearing of the suit ex parte’. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the “hearing” of the suit has been



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completed and the Court being competent to pronounce the judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under O. XX R. 1, there is clearly no adjournment of “the hearing” of the suit, for, there is nothing more to be heard.

xx xxxx

If, therefore, the hearing was completed and the suit was not “adjourned for hearing”, O. IX R.7 could have no application and the matter would stand at the stage of O. IX R.6 to be followed up by the passing of an ex parte decree making R. 13 the only provision in order IX applicable.”

In view of the above, we hold that application under Order 9 Rule 7 C.P.C. filed by the appellant before the court below is misconceived.”



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9. Documents filed by the first respondent in respect of proceedings before the Court would go to show that the matter has already been reserved for judgment. In view of the authorities referred above, it is clear that the defendant cannot move an application, under Order IX Rule 7 of the Code of Civil Procedure, when the case has already been reserved for judgment. In such a view of the matter, orders passed by the learned trial Judge, dismissing the application filed under Order IX Rule 7 of the Code of Civil Procedure is justified and therefore, cannot be interfered with.

10. In the result, this **Civil Revision Petition is dismissed.** No costs. Consequently, the connected Miscellaneous Petition is closed.

7/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.



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VI Additional City Civil Court, Chennai



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Dr.D.NAGARJUN,J

mvs.

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