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C.R.P(MD)No.2071 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2071 of 2023
and
C.M.P(MD)No.10357 of 2023

Vellaiammal

... Petitioner/Petitioner/
Defendant

Vs.

1.R.Karuppanan
2.K.Manimurugan
3.C.Dhanapal

...Respondents/Respondents
Plaintiffs

Civil Revision Petition is filed under Article 227 of the Civil Procedure Code, to set aside the returned order passed by the District Court Karur, in I.A.Sr.No.7177 of 2023 dated 11.08.2023 and may direct the trial Court to number the exparte to set aside the petition.

For Petitioner

:Mr.K.P.Narayanakumar

ORDER

The Civil Revision Petition is filed against the returned order dated 11.08.2023 passed in I.A.Sr.No.7177 of 2023 by the District Court Karur.



2. According to the revision petitioner/defendant, the respondents/plaintiffs filed a suit in O.S.No.158 of 2022 before the District Court, Karur, for recovery of money, in which, the petitioner/defendant was set ex-parte on 05.08.2023 for non-appearance. Thereafter, the petitioner herein preferred an application for setting aside the ex-parte decree passed on 05.08.2023 stating that he was unable to contact his counsel, as he was suffering from fever. Therefore, he could not appear on the date of hearing and the trial Court has passed an ex-parte order against him. Further, the trial Court returned the said application stating that the said application is not maintainable and also relied upon two judgments in this regard. Aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel appearing for the revision petitioner would submit that the trial Court failed to analyze that the ex-parte order was passed only due to the absence of D.W.1 on 05.08.2023. The learned counsel further submitted that in the judgment quoted by the trial Court for returning the application filed to set aside the ex-parte decree, the scope of Order 18 of C.P.C., was not considered and also failed to consider the explanation in Order XVIII of C.P.C., which reads as follows:

“Explanation” :- Nothing in this rule shall affect the jurisdiction of the Court for reasons to be recorded in writing



to direct any party to examine any witnesses at any stage.”

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4.No doubt the examination of any witnesses at any stage is within the jurisdiction of the trial Court. Order 9 Rule 7 of C.P.C., only directs the Court to analyze the case for non appearance of the defendant on the date of adjourned hearing. Therefore, the judgment quoted by the trial Court is not applicable to the facts of the present case. The trial Court ought to have considered the explanation given in Order XVIII of C.P.C.

5.Therefore, the returned order dated 11.08.2023 passed by the trial Court in I.A.Sr.7177 of 2023 is set aside and the trial Court is directed to number the said application and dispose the same on merits and in accordance with law, as expeditiously as possible, within a period of two weeks from the date of receipt of a copy of this order.

6.With the above observation, this Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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C.R.P(MD)No.2071 of 2



K.GOVINDARAJAN THILAKAVADI, J.

Ns

To

- 1.The District Court,
Karur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.2071 of 2023
and
C.M.P(MD)No.10357 of 2023

18.08.2023