



C.R.P.(MD)No.2637 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2637 of 2023

and

C.M.P.(MD)No.13756 of 2023

Ravi @ Abdul Raheem

... Petitioner

Vs.

1. Fathima

2. The Inspector of Police,
Keelakarai Police Station,
Keelakarai, Ramanathapuram.

3. The Sub Registrar,
Keelakarai Sub Registrar Office,
Keelakarai,
Ramanathapuram.

... Respondents

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Principal District Judge, Ramanathapuram to number the IA in A.S.No.4 of 2022 pending on the file of the Principal District Court, Ramanathapuram and dispose of the same within a stipulated time.



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For Petitioner : M/s.J.Madhu
For R1 : No appearance
For R2 & R3 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The Civil Revision Petition is directed against the order of return dated 09.09.2022 questioning the maintainability of the petition filed under Order 41 Rule 19 C.P.C. as the judgment was delivered on merits after setting the revision petitioner herein as *ex parte*.

2. Notice sent to the first respondent has returned.

3. The learned counsel appearing for the revision petitioner would submit that in a similar case between the same parties, this Court has passed an order in C.R.P.(MD)No.2759 of 2023 directing the learned Principal District Judge, Ramanathapuram, to take the petition on file, if it is otherwise in order and to proceed in accordance with law.



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4. The learned counsel appearing for the revision petitioner would further submit that challenging the judgment and decree passed in O.S.No. 37 of 2012 dated 26.10.2021, two appeals came to be preferred by the first respondent in A.S.Nos.4 and 6 of 2022 and then the appellate Court, by setting the revision petitioner *ex parte*, has proceeded to hear the appellant's side arguments and passed the common judgment dated 28.03.2022 allowing both the appeals and thereby, setting aside the judgment and decree passed in O.S.No.37 of 2012 dated 26.10.2021.

5. It is evident from the records that the revision petitioner, who is the first respondent, has filed a petition under Order 41 Rule 19 C.P.C., (but actually Order 41 Rule 21 C.P.C.) for setting aside the *ex parte* order passed against him, but the learned Principal District Judge has returned the petition on 27.04.2022 seeking correct date of disposal and vakalath to be filed in A4 sheet. Subsequently, the papers were resubmitted and again, the petition was returned and thereafter on 09.09.2022, the petition was returned, questioning the maintainability of the petition.

6. It is necessary to refer the following passage in the order passed in C.R.P.(MD)No.2759 of 2023,



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“3. Order 41 Rule 21 C.P.C. contemplates that where an appeal is heard ex parte and judgment is pronounced against any of the respondent, he may apply to the Appellate Court to re-hear the appeal and if he satisfies the Court that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms. But, in the case on hand, as already pointed out, since the revision petitioner has not turned up for the hearing fixed, he was set ex parte and thereafter, judgment was pronounced. Hence, the revision petitioner is having every right under Order 41 Rule 21 C.P.C. to file a petition to re-hear the appeal, but the learned Principal District Judge, without considering the provision, has returned the petition mechanically. Considering the above, the learned Principal District Judge, Ramanathapuram, is hereby directed to take the petition on file, if it is otherwise in order and to proceed in accordance with law.”

7. The above order is squarely applicable to the case on hand. Hence, the learned Principal District Judge, Ramanathapuram, is hereby directed to take the petition on file, if it is otherwise in order and to proceed in accordance with law.



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8. With the above direction, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

13.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Registry is directed to return the original papers to the revision petitioner, after getting necessary acknowledgments.

To

1. The Principal District Court,
Ramanathapuram.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.2637 of 2023
and
C.M.P.(MD)No.13756 of 2023

Dated : 13.12.2023