



C.R.P.(MD)No.2759 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2759 of 2023

and

C.M.P.(MD)No.14361 of 2023

Ravi @ Abdul Raheem

... Petitioner/
Petitioner/
1st respondent

Vs.

Fathima

... Respondent/
Respondent/
Appellant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned District Judge, Ramanathapuram to number the IA in A.S.No.6 of 2022 pending on the file of the District Court, Ramanathapuram and dispose of the same within a stipulated time.

For Petitioner : M/s.J.Madhu



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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. It is seen from the written endorsement that the revision petitioner, after receiving the notice, has not chosen to appear on the hearing date and that the learned Appellate Judge, by setting him *ex parte*, has proceeded to hear the appellant's side and passed the judgment dated 28.03.2022 allowing the appeal and setting aside the judgment and decree passed in O.S.No.37 of 2012 dated 26.10.2021. It is further seen 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



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were resubmitted and again, the petition was returned and thereafter on 09.09.2022, the petition was returned, questioning the maintainability of the petition.

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.



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

31.10.2023

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.2759 of 2023
and
C.M.P.(MD)No.14361 of 2023

Dated : 31.10.2023