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C.R.P.No.1717 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1717 of 2024

and

C.M.P.No.9043 of 2024

P.Thirupurasundari

... Petitioner

Vs

C.H.Sathish

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 17.08.2023 passed by the XVIII Assistant City Civil Court Judge, Chennai in I.A.No.1 of 2022 in O.S.No.5332 of 2022.

For Petitioner : Mr.D.Magesh

For Respondent : Mr.D.Pandarinath

ORDER

This Civil Revision Petition is directed against the order and decreetal order in I.A.No.1 of 2022 in O.S.No.5332 of 2022 on the file of the XVIII Assistant City Civil Court Judge, Chennai.

2. The revision petition has been filed against the dismissal of the



petition seeking leave to defend the suit. This Court, in several matters filed under Article 227 of the Constitution of India, had dismissed the revision petitions holding that a petition seeking leave to defend is not maintainable against the order of dismissal. In this regard, it is relevant to refer to the judgment of the Apex Court in the case of *Ajay Bansal v. Anup Mehta and others* reported in 2007 [2] SCC 275. The relevant portion of the judgment is extracted hereunder:

“13. Ordinarily, an application under Article 227 of the Constitution of India would not be maintainable where an appeal lies. An appeal lay from the decree under Section 96 of the Code. When an appeal could be filed, ordinarily, an application under Article 227 of the Constitution of India would not be entertained.

14. A decree passed subsequent to the refusal of leave to defend could either be under Order 37 Rule 3(6) of the Code or it could be based on the affidavit evidence on the side of the plaintiff and the documents produced or even based on oral evidence formally proving, say, the execution of a promissory note by the defendant. It may not be proper or necessary to apply the theory of “dependent order” in such circumstances. For one, the theory may not apply. Even if this Court were to set aside the order of the court below and give the defendant leave to defend the suit, the decree that is passed may not go automatically. It may have to be set aside. Secondly, the defendant can always go to the court which passed the decree and move under Rule 4 of Order 37 of the Code to reopen the decree.



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15. The theory of “dependant order” may not apply in a case of this nature because even if this Court were to set aside the order refusing leave to defend, the decree subsequently passed may not fall by itself. It has still to be set aside either by resort to Order 37 Rule 4 or by way of an appeal, or by some other mode known to law. In a given case like the present one as it may not be proper to interfere with the decree merely because in an appeal against an order refusing leave to defend, this Court is inclined to take a different view. (See V.S. Saini v. D.C.M. Ltd. [AIR 2004 Del 219] .)”

3. The above view has been consistently followed in the present case and the Civil Revision Petition, filed under Article 227 of the Constitution of India, is thus not maintainable against an order dismissing an application under Order 37 Rule 3(5) of CPC to grant leave to defend the suit.

4. Accordingly, the Civil Revision Petition stands dismissed as not maintainable. However, it is open to the revision petitioner to file an appeal and it is also open to her to raise all grounds that are raised in the Civil Revision Petition, so that the petitioner can challenge the order which is now impugned in the revision petition before the Appellate Court. It is open to the revision petitioner to seek exclusion of time taken by her to prosecute the



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present revision when she files an appeal under Section 96 of CPC against the judgment and decree in the Suit. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation: Yes / No

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Note: Issue order copy on 03.09.2024

To

The XVIII Assistant City Civil Court Judge,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

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C.R.P.No.1717 of 2024
and
C.M.P.No.9043 of 2024

19.08.2024