



C.R.P. No.2152 of 2023 and C.M.P. No.13105 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.08.2024

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.2152 of 2023 and C.M.P. No.13105 of 2023

Srinivasan

... Petitioner

VS

S.Revathy

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.01.2023 passed by the learned IV Additional District Judge, Chennai, in I.A.No.4 of 2021 in O.S.No.4511 of 2020.

For petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.V.B.Thirupathi kumar

ORDER

This civil revision petition has been filed against the order dated 10.01.2023 passed by the learned IV Additional District Judge, Chennai, in I.A.No.4 of 2021 in O.S.No.4511 of 2020 dismissing the petition filed under Order 37 Rule 3 of Code of Civil Procedure seeking leave to defend the suit.

2.Today, when the matter is taken up for hearing, learned counsel



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appearing for the respondent would submit that the main suit in O.S.No.4511 of 2020 on the file of IV Additional City Civil Court, Chennai, itself had been disposed on 10.01.2023 and a judgment and decree has been passed and thereby, the petitioner can only file an appeal and a revision under Article 227 of the Constitution of India is not maintainable.

3.A similar revision petition filed under Article 227 was dismissed by this Court following the judgment of the Hon'ble Supreme Court of India in the case of Ajay Bansal V. Anup Mehta and Others (2007 [2] SCC 275).

4. In the above said judgment, the Hon'ble Supreme Court of India has held that a Revision under Article 227 of the Constitution of India is not maintainable where an Appeal lies. It is further held that as against the order dismissing the petition seeking a leave to defend, revision petition under Article 227 of the Constitution of India is not maintainable. It is also held that it is not necessary to apply the theory of "dependent order" as the decree that is passed may not go automatically.



5. It has been observed by the Apex Court in the above cited

judgment as follows:-

"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.

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.

6.This Court has also held that the Civil Revision Petition under Article 227 of the Constitution of India is not maintainable against the order dismissing an application under Order 37 Rule 3(5) of CPC to grant leave to defend the Suit.

7.The present civil revision petition is also against the order dismissing the application filed by the revision petitioner to defend the Suit filed by him under Order 37 Rule 3 of CPC to grant leave to defend the Suit. However, it is open to the revision petitioner to file an appeal and it is also open to him 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 for exclusion of time taken by the petitioner to prosecute the present revision under Section 14 of the Limitation Act, when he files an appeal under Section 96 of CPC against



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the judgment and decree in the Suit.

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8. In the result, the Civil Revision Petition stands dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.

27.08.2024

Index: Yes/No
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To

IV Additional District Court, City Civil Court, Chennai.

A.D.JAGADISH CHANDIRA, J.

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