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C.R.P.No.2205 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2205 of 2021 and
C.M.P.No.16705 of 2021

Mrs.Kasthuri

... Petitioner

Vs.

1.Mr.Thangeeappan
2.Mrs.Pachiammal (Deceased)
3.Suguna
4.Tamilselvi
5.M.Suresh
5.The Sub-Registrar
Sub-Registration Office,
Kalambur, Thiruvannamalai District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 06.08.2021 made in I.A.No.18 of 2020 in O.S.No.409 of 2014 on the file of District Munsif Court, Pollur.

For Petitioner : M/s.Shivakumar and Suresh

For Respondent 1 : Mr.C.Mahendran
For respondent 2 to 4 : No appearance
For respondent 5 : Mr.V.Jeeva Giridharan
Additional Govt. Pleader



ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner/2nd defendant to set aside the *exparte* order passed against him on 07.09.2016 for her failure to file written statement.

2. In the affidavit filed in support of the Order 9 Rule 7 petition, it was stated by the petitioner that she engaged a counsel and contested the case. However, the letter written by the counsel did not reach her as she was out of her native place at the relevant point of time. It was further stated that at the relevant point of time there was a death of her relative and she was out of her native place to attend the funeral.

3. The Court below dismissed the application filed by the petitioner to set aside the *exparte* order mainly on the ground that the application has been filed after a period of three years and four months. The Court below observed that even though no time limit is prescribed for filing application to set aside the *exparte* order, Article 137 of Limitation Act would apply to the case on



hand and as a consequence, dismissed the petition as it was filed beyond the period of three years.

4. In ***Rajasekar Vs Govindammal*** reported in **2020(6) CTC 724**, this Court after referring to the earlier cases came to the conclusion that there is no limitation for filing petition to set aside the *exparte* order under Order 9 Rule 7 of CPC.

5. In ***Duraisamy Vs Aravindan and Others in C.R.P.(PD).No.2569 of 2021***, I had an occasion to consider this question and followed the decision in Rajasekar case reported in 2020(6) CTC 724 cited supra.

6. In case of *exparte* order, the petitioner, who was set *exparte* gets a new cause of action at each of the next hearing dates. It is a continuous cause of action. Therefore, there cannot be a limitation for filing petition to set aside the *exparte* order till judgment is pronounced or reserved for pronouncing judgment.



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7. In view of the discussions made earlier, the order passed by the Court below is liable to be set aside and accordingly, the Civil Revision Petition stands allowed on condition that the petitioner shall pay a sum of Rs.5000/- (Rupees five thousand only) to the 1st respondent within a period of four weeks from today. In case, the petitioner fails to pay the amount as directed, the civil revision petition shall stand automatically dismissed. On payment of the cost as directed, the Court below is directed to take on file the written statement filed by the petitioner along with Order 9 Rule 7 petition and proceed with the suit in accordance with law.

8. With these observations, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

18.01.2024

Index : Yes / No
Internet : Yes / No
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To
The District Munsif Court, Pollur.



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S.SOUNTHAR, J.

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