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CRP.No.2954 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

CRP.No.2954 of 2024
and
CMP.No.15834 of 2024

Surya

...

Petitioner

/vs/

The Deputy Registrar of Cooperative
Societies (Housing),
No.18, Varadanar Street,
Vedachala Nagar,
Chengalpattu.

...

Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the judgement and decree passed in Co-operative Civil Miscellaneous Appeal No.5/2009 dated 03.11.2023 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.P.K.Ganesh

For Respondent : Mr.C.Sathish, Government Advocate



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ORDER

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Heard Mr.P.K.Ganesh, learned counsel for the petitioner and Mr.C.Sathish, learned Government Advocate for the respondent.

2. The petitioner has filed this Civil Revision Petition by challenging the common order passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu dated 03.11.2023 in Co-operative CMA.No.5/2009 in which the Civil Miscellaneous Appeals filed by this petitioner and others have been dismissed.

3. The learned counsel for the petitioner submitted that the appellate authority, without following the provision of Order XLI Rule 17 of CPC, passed orders on merits in the appeals filed by them in their absence.

4. Reliance was placed on the recent judgment of the Hon'ble Supreme Court made in SLP.No.23809/2023 wherein the Court has held that if the appellant does it appear when the appeal is called for, the appeal can only be dismissed for non prosecution and not on merits. However, the learned Appellate Authority had chosen to pass an exhaustive order on merits even in the absence of the appellants. The order would only show at the time when these appeals



were called that there was no representation on behalf of the appellants. In that case, the rightful course is to dismiss the appeals for default. Since the court did not follow the provisions under Order XLI Rule 17 CPC, which would read as under:

"17. Dismissal of appeal for appellant's default:

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation: Nothing in this sub-rule shall be construed as empowering the court to dismiss the appeal on the merits."

5. Had the appeal been dismissed simply, the appellants would have got an opportunity to restore their appeals and argue the case on merits. But the Appellate Court had adverted to pass an order on merits, which is not correct. In view of the above stated reasons, it is appropriate to remand the matter back to the learned Principal District Judge, Kancheepuram District at Chengalpattu, in order to pass an order either on merits and in the event that all the appellants make their appearance and advance their arguments, or, in the absence of their appearance, to pass an order in compliance with Order 41 Rule 17 of CPC as



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already stated above.

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6. In view of the above stated reasons, the Civil Revision Petition is **allowed** and the impugned order passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu dated 03.11.2023 in Co-operative CMA.No.5/2009 is set aside and the matter is remitted back to the file of the learned Principal District Judge, Chengalpattu, to pass orders either on merits in the event that all the appellants make their appearance and advance their arguments, or, in the absence of their appearance, to pass an order in compliance with Order 41 Rule 17 of CPC. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

19.09.2024

Index : Yes /No

Internet : Yes/No

Speaking: Non-Speaking

Neutral: Yes/No

jrs



CRP.No.2954 of 2021

To

The Deputy Registrar of Cooperative
Societies (Housing),
No.18, Varadanar Street,
Vedachala Nagar, Chengalpattu.



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R.N.MANJULA, J.

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