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C.R.P.No.3945 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**C.R.P.No.3945 of 2024 and**  
**C.M.P.No.21562 of 2024**

M.Gunasekaran

... Petitioner

Vs.

The Deputy Registrar of Cooperative Societies (Housing),  
Vedachala Nagar,  
Chengalpattu 603 001

... Respondent

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the common order dated 03.11.2023 passed in Co-operative Civil Miscellaneous Appeal No.6 of 2009 by the Principal District Court, Kancheepuram District at Chengalpattu.

For Petitioner : Mr.S.Dinuprashanth

For Respondent : Mr.B.Tamilnidhi, AGP

**ORDER**

This Civil Revision Petition has been preferred to set aside the common order dated 03.11.2023 passed in Co-operative Civil



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Miscellaneous Appeal No.6 of 2009 by the Principal District Court,  
Kancheepuram District at Chengalpattu.

2. Heard Mr.S.Dinuprashanth, learned counsel for the petitioner and Mr.B.Tamilnidhi, learned Additional Government Pleader for the respondent.

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 appeal filed by the petitioner in his 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 the appellant who does not appear when the appeal is called, can only get an order of dismissal 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



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order would only show that at the time when the appeals were called, there was no representation on behalf of the appellants. In that case, the rightful course is to dismiss the appeals for default. 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 the appeal 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, in the event that all the appellants make their appearance and advance their arguments, or, in the absence of their appearance, to pass



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an order in compliance with Order 41 Rule 17 of CPC and as already stated.

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.06/2009 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 if 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.

Index : Yes /No  
Speaking / Non-speaking  
Neutral Citation : Yes / No  
gsk

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To

- 1.The Principal District Court,  
Kancheepuram District at Chengalpattu.
- 2.The Deputy Registrar of Cooperative Societies (Housing),  
Vedachala Nagar,  
Chengalpattu 603 001



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**R.N.MANJULA, J.**

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