



CRP..No.3340 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3340 of 2024 and C.M.P.No.17948 of 2024

L.Babu

..Petitioner

Vs.

1.T.V.Satchidanandan

2.Sita

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the order passed in I.A.No.3 of 2023 dated 22.01.2024 in O.S.No.8976 of 2022 on the file of the XXI Additional City Civil Court, Allikulam, Chennai and consequently restore the same.

For Petitioner : Mr.M.Sankar
For Respondents : Ms.Anuradha Sekar

ORDER

This Revision Petition is directed against the order dated 22.01.2024 passed in I.A.No.3 of 2023 in O.S.No.8976 of 2022 by the learned XXI Additional Judge, XXI Additional City Civil Court, Allikulam, Chennai dismissing the petition filed under Order IX Rule 13 of CPC to set aside the ex parte judgment and decree dated 24.08.2023 made in the above suit and consequently restore the suit.



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2. The brief facts leading to filing of this petition are as follows:

2.a. The plaintiffs/respondents have filed the suit to vacate and deliver vacant possession of the schedule mentioned properties to the plaintiffs and to pay the plaintiffs a sum of Rs.19,88,607/- being the arrears of rent and also a sum of Rs.80,000/- per month towards damages for the use and occupation of the scheduled mentioned property on and from the plaint till the defendant vacate and deliver the vacant possession of the scheduled mentioned property to the plaintiffs.

2.b. On summons, the defendant appeared on 03.02.2023 and undertook to file a vakalat and the matter was posted to 15.02.2023, on that day, the counsel had appeared and filed vakalat and the suit was adjourned to 15.03.2023 for filing written statement. On 15.03.2023, it was adjourned to 10.04.2023, once again the matter was adjourned to 26.04.2023. However, again on 26.04.2023, adjournment was sought, the Trial Court rejected the petition for adjournment and the defendant was set exparte. On 16.06.2023, the defendant filed a petition in I.A.No.2 of 2023 to set aside the ex parte order and the same was dismissed on 14.07.2023. Thereafter, the suit came to be decreed on 24.08.2023. The petitioner herein filed a petition in I.A.No.3 of 2023 under Order IX Rule 13 of CPC to set aside



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the ex parte judgment and decree dated 24.08.2023, wherein, the Trial Court after hearing both sides dismissed the petition vide order dated 22.01.2024. Against which the present revision is filed.

3. The learned counsel for the petitioner submitted that the Trial Court has erred in dismissing the petition filed under Order IX Rule 13 of CPC, thereby, revision under Article 227 of the Constitution of India is maintainable. Thereby seeks to allow this petition.

4. The learned counsel for the respondents submitted that the petitioner has wilfully avoided in appearing before the Trial Court and a sum of Rs.30 lakhs is payable by the petitioner as rental arrears to the defendants/respondents. She would further submit that a revision under Article 227 of the Constitution of India against the order passed under Order IX Rule 13 of CPC is not maintainable.

5. Heard both sides and perused the materials placed on record. The Hon'ble Supreme Court in the case of *Ajay Bansal V. Anup Mehta and Others* reported in **2007 [2] SCC 275** has held that a Revision under Article 227 of the Constitution of India is not maintainable where an appeal lies. It



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is further held that as against the order dismissing the petition seeking to set aside the ex parte order, revision petition under Article 227 of the Constitution of India is not maintainable. When an appeal could be filed, ordinarily, an application under Article 227 of the Constitution of India would not be entertained.

6. It is relevant to extract Order XLIII Rule 1 (d) of Code of Civil Procedure, which would read as follows:

“ 1.Appeals from orders.- An appeal shall lie from the following orders under the provisions of Section 104, namely:-

...

(d) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;”

7. In view of the above, when an appeal could be filed as per Order XLIII Rule 1 (d) of Code of Civil Procedure, a revision under Article 227 of the Constitution of India cannot be entertained.

8. Such view of the matter, this revision petition stands dismissed as not maintainable. However, it is open to the revision petitioner to file an appeal and it is open to him to raise all grounds in the Appellate Court. It is



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also open to the petitioner to seek exclusion of time taken by him to prosecute the present revision when he files an appeal as against the order impugned. No costs. Consequently, connected miscellaneous petition stands closed.

03.09.2024

dhk

Internet : Yes/No

Index : Yes/No

To,

XXI Additional Judge,
XXI Additional City Civil Court,
Allikulam, Chennai

A.D.JAGADISH CHANDIRA, J.,

dhk



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