



C.R.P.(PD)No.2895 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2895 of 2022

and

C.M.P.Nos.15734 of 2022 & 261 of 2023

S.Selvaraj

.. Petitioner

Vs.

S.Palaniappan

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.08.2022 passed by the learned Principal District Judge, Salem in I.A.No.6 of 2022 in O.S.No.184 of 2016.

For Petitioner : M/s.C.Umashankar

For Respondent : Mr.S.P.Venkates



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ORDER

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2. O.S.No.184 of 2016 is a suit filed for recovery of money of Rs.10,00,000/- together with interest at the rate of 18 percent per annum.

3. The said suit was posted on 24.11.2021 for the appearance of the defendant. Since the defendant was suffering from viral fever, he was unable to be present in Court and therefore, he was set *ex parte*. Thereafter, the matter was posted for orders on 18.03.2022. The case was not listed for any further hearing but it was listed for pronouncement of judgment on 31.03.2022. To set aside the *ex parte* order that had been passed against the petitioner on 24.11.2021, an application in I.A.No.6 of 2022 was filed. This was opposed by the respondent/plaintiff stating that as the matter stands adjourned for a judgment and not for hearing, an application under Order IX Rule 7 of the Code of Civil Procedure is not maintainable.

4. The learned trial Judge allowed the application in the interest of



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justice. Hence, this revision.

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5. Heard M/s.C.Umashankar and Mr.S.P.Venkates for the respective parties.

6. An application under Order IX Rule 7 of the Code of Civil Procedure is maintainable, only if the defendant shows a good cause for his non-appearance during the previous hearing. The additional condition is that, the suit should be adjourned for “hearing” in the suit *ex parte*.

7. When the matter was adjourned for pronouncement of judgment, there is no question of hearing at all. Therefore, the application under Order IX Rule 7 of the Code of Civil Procedure is not maintainable and hence, it has to be dismissed. Unfortunately, the learned Principal District Judge without taking note of this fact has allowed the application. The order is contrary to the Order IX Rule 7 of the Code of Civil Procedure and hence, it requires interference at the hands of this Court.

8. Accordingly, the order is set aside. The application filed in



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I.A.No.6 of 2022 in O.S.No.184 of 2016 shall stands dismissed. However, liberty is granted to the petitioner to move an application under Order IX Rule 13 of the Code of Civil Procedure, if the judgment is pronounced against the interest of the defendant.

9. With the above liberty, this Civil Revision Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

05.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The Principal District Judge,
Salem

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and
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