



C.R.P.No.4754 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 25.11.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

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S.Giriraj

.. Petitioner

**Versus**

1.S.Chandra

2.Thilai @ Nakchathira

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 06.09.2024 made in I.A.No.9 of 2024 in O.S.No.122 of 2020 on the file of the learned Additional District Judge at Dharmapuri.

For Petitioners : Mr.S.Raghu  
for Mr.G.Kesavan

**ORDER**

This civil revision petition arises against the order of the learned Additional District Judge, Dharmapuri in I.A.No.9 of 2024 in O.S.No.122 of 2020 dated 06.09.2024.



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2. The civil revision petitioner is the sole defendant in the suit. O.S.No.122 of 2020 is a suit for partition and separate possession, and for other consequential reliefs. The suit was listed for cross examination of PW1. As the defendant did not cross examine the plaintiffs, he was set *exparte* and the suit was listed for judgment.

3. The defendant pleaded that on 01.02.2024, the civil revision petitioner had met with an accident on account of which he underwent surgery and he was not in a position to examine PW1. He further pleaded that he contacted his lawyer on 21.06.2024 and came to know that the suit had proceeded to the stage of judgment. Hence, he sought for setting aside the *exparte* order. This application was taken on file as I.A.No.9 of 2024 and notice was ordered to the respondents/plaintiffs.

4. The respondents/plaintiffs filed a counter stating that despite lapse of five months from the date of *exparte* order, the defendant had not taken any steps to file the application. They further pleaded that the petition is not maintainable as the case was posted for judgment.



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5. The learned Trial Judge, following the authority of the Supreme Court in ***Bhanu Kumar Jain v. Archana Kumar and another, AIR 2005 SC 626***, has held that the petition is not maintainable and dismissed the same. Hence, this revision.

6. I have heard Mr.S.Raghu for Mr.G.Kesavan for the civil revision petitioner.

7. Mr.S.Raghu states that the civil revision petitioner could not appear before the Trial Court on account of the accident that had suffered. The accident had caused multiple injuries on him. He pleads that if an opportunity is granted, he will co-operate for the disposal of the suit.

8. I have carefully considered the submission of Mr.S.Raghu.

9. The narration of the facts shows that the suit has proceeded to the stage of judgment. An application under Order IX Rule 7 of the Code of Civil Procedure can be filed, when the matter is adjourned for further proceedings in the trial. In this case, the trial is over and the arguments have



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been heard and the matter is now at the stage of Judgment. This implies there are no proceedings for trial pending for the court to entertain an application under Order IX Rule 7 of the Code of Civil Procedure. Hence, the view taken by the learned Additional District Judge at Dharmapuri cannot be found fault with. This revision is dismissed. The order of the learned Additional District Judge, Dharmapuri dated 06.09.2024 stands confirmed.

10. At this stage, Mr.S.Raghu pleads that in case a decree is passed against the petitioner, it will be an *ex parte* decree. The learned counsel is correct, it would be an *ex parte* decree. Liberty is granted to the petitioner to file an application under Order IX Rule 13 of the Code of Civil Procedure to set aside the *ex parte* decree, in such an eventuality.

11. With the above observation, this civil revision petition is dismissed. No costs.

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Index : yes/no  
Speaking order/Non-speaking order



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Neutral Citation : yes/no  
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To

The Additional District Judge at Dharmapuri



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**V.LAKSHMINARAYANAN, J.**

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