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C.R.P. (PD) No.4106 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.4106 of 2024

K.Jegan

.. Petitioner

Versus

1.Kalaimani
2.M/s National Insurance Company Limited
Divisional Office No.1, LRN Colony
Saradha College Main Road, Salem – 7.

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Special Subordinate Judge, Salem to entertain the unnumbered I.A.SR.No.5671 of 2022 in M.C.O.P.No.807 of 2015 filed by the petitioner herein on 10.10.2022 and number the same.

For the Petitioner : Mr.R.Nalliyappan

For the Respondents : Mr.Arunkumar for R2

ORDER

This Civil Revision Petition arises against the order of return passed by the learned Special Subordinate Judge, Salem in returning the



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I.A.Sr.No.5671 of 2022 in M.C.O.P.No.807 of 2015 dated 10.10.2022.

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2. The Civil Revision Petitioner is the 1st respondent in M.C.O.P.No.807 of 2015. He pleaded that on account of a motor vehicle accident, the 1st respondent initiated M.C.O.P.No.807 of 2015. He had received the summons in the said claim petition and had handed over the same to the Insurance Company for the purpose of contest. The Insurance Company had also assured him that his interest will be defended. Yet unfortunately, he did not so, the Trial Court proceeded in passing the *exparte* decree against him on 01.09.2017.

3. In terms of the order passed in M.C.O.P.No.807 of 2015 dated 01.09.2017, the Insurance Company was called upon to satisfy the award and to recover the same from the Civil Revision Petitioner. Therefore, the Civil Revision Petitioner came to know about the said order only on 14.09.2022, when he received a notice in the “pay and recover’ application in I.A.No.1740 of 2021.



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4. Immediately, he filed a petition to set aside the *exparte* decree.

The learned Special Subordinate Judge, Salem, had returned the said application with an endorsement that as the main case itself disposed of after full trial, this petition is not maintainable.

5. Aggrieved by the same, the 1st respondent in the MCOP is before me.

6. When the matter came up for admission, I requested Mr.Nalliyappan to serve the typed set of papers on Mr.Arunkumar, Standing Counsel for the M/s National Insurance Co. Ltd.,. Accordingly, Mr.Arunkumar has been served.

7. I have heard Mr.Nalliyappan and Mr.Arunkumar.

8. I am not inclined to go into the merits of the contention that have been raised by Mr.Nalliyappan which were stoutly and vehemently denied by Mr.Arunkumar.



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9. Mr.Nalliyappan states that the papers were handed over to the Insurance Company Mr.Arunkumar states that no such incident had occurred ever.

10. Whether these allegations are true or not is for the learned Judge to decide at the time of disposal of I.A.Sr.No.5671 of 2022. For the disposal of this revision, it is suffice to refer to the Judgment of the Hon'ble Mr.Justice N.Seshasayee in ***Selvaraj and Ors. Vs. Koodankulam Nuclear Power Plant India Limited, Represented through its Project Director*** in CRP(MD) Nos.915, 943, 967, 991 & 330 of 2020 dated 16.07.2021.

11. The learned Judge had directed that, at the time of numbering of a petition, the Court should not don the role of the defendant and take pleas which ought to be taken by the defendant. At the time of numbering of a petition, the Courts are carrying out a ministerial activity and are not entitled to pass any judicial orders.



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12. In view of the verdict pointed out above, the return in I.A.Sr.No.5671 of 2021 in M.C.O.P.No.805 of 2015 dated 10.10.2021 is set aside. The learned Special Subordinate Judge, Salem, shall entertain the I.A.Sr.No.5671 of 2021 and number the same, if it is otherwise in order.

13. After issuance of notice to the National Insurance Company Limited and receiving a counter from them, he shall dispose of the application on its merits. At that time, the Insurance Company is entitled to take all the defence available to them including the plea that the application is not supported by an affidavit under Section 5 of the Limitation Act and that the decree was one passed after full contest.

14. With the above directions, this Civil Revision Petition stands disposed of. No costs.

24.10.2024

Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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Note:Registry to return the original petition after obtaining necessary endorsement.

To
The Special Subordinate Judge
Salem.



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V.LAKSHMINARAYANAN, J.,

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