



C.R.P.No.1917 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.1917 of 2025

1.Srinivasan
2.Manivannan

... Petitioners

Vs.

1.K.Baby

2.A.T.M.Financial Services,
No.32, First Floor,
79th Street, 18th Avenue,
Ashok Nagar,
Chennai – 600 083.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to number the application in unnumbered I.A.SR.No.82002 of 2022 in A.S.No.148 of 2018 on the file of the II Additional City Civil Court, Chennai, dated 03.02.2023.

For Petitioners : Ms.Gobika Nambiar
for Mr.Sharath Chandran



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ORDER

Challenging the order of return passed by the Appellate Court in an application to re-hear the Appeal, the present revision has been filed.

2.The suit in O.S.No.7511 of 2011 has been originally filed by the 1st respondent for specific performance to enforce a sale agreement dated 23.05.2005. The said suit was dismissed after full fledged trial by the trial Court. Challenging the dismissal, the plaintiff filed an appeal in A.S.No.148 of 2018. The said appeal was allowed by the Appellate Court on 03.11.2022. After disposal of the appeal, the present application has been filed by the defendants 2 and 3 under Order 41 Rule 21 CPC for re-hearing the Appeal. It is their contention that they have not been heard and the Appeal had been allowed *ex parte*. Therefore, they sought permission of the Court to file an application to re-hear the appeal. The said application has been returned with the endorsement “*Judgment pronounced after full trial (contested judgment). Hence, how this petition is maintainable ?*”. Challenging the order of return, the present revision has been filed.



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3.Learned counsel appearing for the revision petitioners has brought to the notice of this Court the judgment of the Appellate Court, particularly in Para No.13 of the judgment, wherein, the Appellate Court has clearly recorded that, right from 30.03.2022, the petitioners' counsel was not present and no arguments have been advanced.

4.I have perused the judgment of the Appellate Court. Though in the appearance column below the cause title of the Appellate Court's judgment, it is shown as if the revision petitioners did not appear, in Para No.13 of the judgment, the Appellate Court has clearly recorded the fact that the Appeal is proceeded without hearing their submissions. In such view of the matter, when the Appeal is heard *ex parte* and the judgment is pronounced against the petitioners, the parties suffering the judgment may apply to the Court to re-hear the Appeal on the ground that they have been prevented by sufficient cause from appearing when the appeal was called on for hearing. It is always open to the parties to show sufficient cause for their non-appearance during the hearing of the appeal as per Order 41 Rule 21 CPC. The very reason recorded by the Appellate Court in Para No.13 makes it



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clear that the revision petitioners have not been heard and the 4th respondent in the Appeal was also set *ex parte*. In such view of the matter, the order of the Appellate Court returning the application under Order 41 Rule 21 CPC on the ground that the appeal has been disposed of after contest, without any basis, is liable to be set aside.

5. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 03.02.2023 in unnumbered I.A.SR.No.82002 of 2022 in A.S.No.148 of 2018 on the file of the II Additional City Civil Court, Chennai, is set aside. The Appellate Court is directed to take the application on file and decide the same on its own merits. In the event of the Appellate Court allowing the application, the revision petitioners shall prosecute the appeal and the appeal shall be disposed within a period of three months from the date of allowing the application under Order 41 Rule 21 CPC. No costs.

18.06.2025

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Note : Registry is directed to return the original impugned order to the petitioner.



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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1.The II Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.

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