
(2008) 09 MAD CK 0163

Madras High Court

Case No: C.R.P. (NPD) SR. No. 78109 of 2008

K.V. Balu

APPELLANT

Vs

Padma Duraisamy

RESPONDENT

Date of Decision: Sept. 25, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 106, Order 21 Rule 34, Order 21 Rule 72, Order 21 Rule 92, Order 43 Rule 1

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: Hema Sampath, for Mrs. R. Meenal, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The petitioner is the judgment debtor in E.P. No. 203 of 2007 in O.S. No. 72 of 2005 on the file of the Principal Sub Court, Villupuram. He filed an application under Order 21 Rule 106 C.P.C. to set aside the exparte order passed against him. The learned Principal Sub Judge, Villupuram dismissed the application on 13.08.2008. Against the said order, the petitioner has come forward with this revision petition before this Court. The Registry has returned the papers by stating that, only Civil Miscellaneous Appeal will lie and Civil Revision Petition could not be filed. The matter is listed before this Court today under the caption "for maintainability". Mrs. Hema Samath, learned Senior Counsel appearing for the petitioner would submit that inasmuch as Order 43 Rule 1 (ja) C.P.C. would provide that if any order which is not covered by Order 43 Rule 1 C.P.C. is revisable and only the categories of orders found in Order 43 Rule 1 (f), (i) and (ja) C.P.C. would call for filing of Civil Miscellaneous Appeal and any other order not provided under Order 43 Rule 1 (ja) C.P.C. has to be taken up as Civil Revision Petition.

2. I see considerable force in the submissions made by the learned Senior Counsel for the petitioner. Order 43 Rule 1 (ja) specifically provides that, if the order is passed

rejecting the application under Order 21 Rule 106 C.P.C., the aggrieved party shall have the right to approach the higher forum for getting the relief which is prescribed for the order passed in the original application, namely, any order passed in any of the provisions contained in Order 21 of the Code of Civil Procedure. In other words, it could be observed that excepting the orders passed under Order 21 Rule 21, Order 21 Rule 34 and Order 21 Rule 72 or 92 as appealable as per Order 43 Rule 1 (f), (i) and (j), any other order passed under any of the Rules in Order 21 is revisable.

3. In support of her contentions, learned Senior Counsel for the petitioner has placed reliance on a decision reported in AIR 1998 Calcutta 137 (Sk. Saiful Nandlal and others vs. Sk. Akkas Ali), wherein identical discussion has been taken up, that when an order is passed under Order 21 Rule 106, the appeal could not be maintainable and the revision has to be filed. In such circumstances, the Registry is directed to take up the matter as Civil Revision Petition, number it and post on 30.09.2008. However, the parties are at liberty to agitate as to the maintainability of the Civil Revision Petition at the time of final hearing.