

(2010) 02 MAD CK 0184**Madras High Court****Case No:** M.P. No's. 2 and 2 of 2009 in C.R.P. (PD) No's. 3964 and 3965 of 2008

R. Balachander

APPELLANT

Vs

M. Palanisamy

RESPONDENT

Date of Decision: Feb. 10, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2010) 1 CTC 830**Hon'ble Judges:** S. Palanivelu, J**Bench:** Single Bench**Advocate:** V. Subramanian, for the Appellant; P. Valliappan, for the Respondent**Final Decision:** Allowed**Judgement**

S. Palanivelu, J.

The petitioner is respondent in the Civil Revision Petitions and defendant in Suit in O.S. Nos. 232 and 200 of 2004 on the file of the Principal District Court, Namakkal. This respondent filed a Suit for recovery of money. The petitioner, at the time of examination of co-owners 1 filed an Application in I.A. No. 48 of 2007 in O.S. No. 232 of 2004 to receive additional written statement with a plea that he has to pay a sum of Rs. 6,28,505/- only. The Petition was dismissed by the Court below. Thereafter, the respondent preferred C.R.P. (PD) No. 3056 of 2007 before this Court and this Court dismissed the same on 3.1.2008. Again it is stated that with an identical plea, this petitioner filed I.A. No. 31 of 2008 in O.S. No. 232 and I.A. No. 258 of 2008 in O.S. No. 200 of 2004 under Order 6, Rule 17 of C.P.C. for amending written statements to incorporate the above said prayer. The Court below allowed the Applications. Hence, the respondent preferred above Civil Revision Petitions before this Court. At the time of hearing of Civil Revision Petitions there was no appearance on the part the petitioner. Notice on him was served through his counsel on record before the Court below. However, there was no appearance on his behalf before this Court.

2. On hearing of the learned counsel for the respondent, this Court on 22.1.2009 allowed the Revision Petitions directing the Court below to dispose of the Suits in O.S. Nos. 232 and 200 of 2004 within a period of three months from the date of receipt of a copy of the Orders

3. Presently, the petitioner has come forward with these Applications by stating that he did not receive any notice in the Civil Revision Petitions from this Court. Subsequently he has also filed a better affidavit by stating that his counsel at lower Court was refusing to receive instructions from him during the relevant period over the dispute about the payment of Advocate fee, he informed the petitioner about the pendency of the Revision Petitions only on 20.3.2009 and at that time alone he came to know that the Petitions were disposed on merits on 22.1.2009.

4. The learned counsel for the petitioner would submit that since there was no communication between the petitioner and his counsel before the lower Court on account of dispute over the payment of Advocate fee to him he had no knowledge about the filing of the Civil Revision Petitions and hence the Court may consider setting aside the order passed by this Court.

5. Conversely, Mr. P. Valliappan, learned counsel for the respondent has submitted that they have got defeated in the earlier attempt to file additional written statement with conflicting pleas presently he has filed these Applications for amendment of the written statements on the same pleas which is mutually destructive to his earlier pleadings and hence there is no ground to be agitated in the Civil Revision Petitions and that the reasons adduced in the affidavit for setting aside the earlier orders of this Court are also not valid.

6. This Court heard both sides. Since the Court notice could not be served on the petitioner, this Court ordered notice to him through his lawyer on record for him before the Court below. He too received the notice. But it is stated that he failed to intimate the receipt of notice to the petitioner, in view of the dispute over the payment of Advocate fee. The dispute over the payment of Advocate fee is within the knowledge of the party to the proceedings and his counsel on record and it could not be established before the Court except pleadings in the affidavit. Of course, it is true that service of notice on Advocate who is appearing before the Court below amounts to service of notice upon the party itself. However, the circumstances available in this matter would indicate that the petitioner was not able to know about the pendency of the Revision Petitions due to the failure on the part of the Advocate in the Court below. In this circumstance, this Court deems it necessary to set aside the order passed by this Court on 29.1.2009 and for extending one more opportunity to the petitioner to agitate the Revision Petition. In the result, the Miscellaneous Petitions are allowed. No costs. The registry is directed to post the case before the portfolio Judge within a week's time.