

(1944) 10 MAD CK 0035
In the Madras High Court

A. Ramamurthi Iyer and Others

APPELLANT

Vs

T.A. Meenakshisundarammal and Another

RESPONDENT

Date of Decision : 10-10-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151

Citation : AIR 1945 Mad 103 : (1944) 57 LW 616 : (1945) 1 MLJ 4

Judgement

1. These two petitions, for which a common order will suffice, have been filed under Order 9 Rule 9 and Section 151 of the CPC to set aside the orders of dismissal passed for default of appearance in C.R.P. Nos. 132 and 133 of 1944.

2. The facts in so far as they are necessary at this stage are that the petitioners' learned advocate was not in Court when the revision petitions were called on for hearing and as his clients were also absent, the petitions were dismissed. According to the learned advocate's affidavit, he had been waiting in Court for some time for the petitions to come on for hearing but had gone to another Court in the interval under the impression that his petitions would not be called on for some little time the preceding causes were disposed of rather more quickly than he anticipated, with the result that he was not present when the petitions were called on for hearing. These facts are not in dispute, and the only question which arises for decision is whether the Court has jurisdiction to restore to the file these revision petitions which have been dismissed for default of appearance.

3. In *P. Subbamma Vs. Ch. Venkata Reddy*, I followed an earlier decision of Burn, J., in *Khizar Mohammed v. Abdul Razack Sahib* (1940 3 M.L.J. 88, and held that a petition of this nature was not maintainable, mainly on the ground that Order 9, Rule 9 of the CPC applies only to suits and not to civil revision petitions. In an attempt to get over this difficulty Mr. K. Rajah Ayyar has put forward the argument that as Order 9, Rule 9 of the Code applies in specific terms only to suits, the Court has no jurisdiction to dismiss a Civil Revision Petition for default of appearance. This argument if accepted would lead to the ridiculous position that a party in any proceeding other than a suit or an appeal, for which provision

is made in Order 41, Rule 19, could choose his own time for hearing the cause the Court would have no power to deal with him for default of appearance. This argument is readily disposed of by a reference to Section 115 of the Code, under which "the High Court may, make such order in the case as it thinks fit." No elaborate argument is necessary in support of the view that this wide power must include the power to dismiss for default of appearance.

4. The dismissal of a cause for default of appearance is as much a final order as a dismissal on the merits; and the Court cannot set aside its own order unless it has jurisdiction to do so. In the case of suits and appeals the power exists under Order 9, Rule 9 and Order 41, Rule 19, CPC to set aside dismissals > of suits and appeals in default of appearance; but there is no corresponding provision relating to civil revision petitions. The only other way in which a final order can be set aside is by way of appeal or review, but in a case of this kind no appeal lies and it is clear from the facts that no case could be made out for review. Lastly, Section 151 of the Code is relied on; but I am unable to agree with Mr. Rajah Ayyar that this section confers upon a Court the power to exercise a jurisdiction which it does not otherwise possess.

5. In the result, I see no sufficient reason to differ from the view previously expressed when I followed the decision of Burn, J., in *Khizar Mohamed v. Abdul Razack Sahib* (1940 3 M.L.J. 88, and the petitions are ordered to be dismissed with costs with one advocate's fee.