

(1947) 09 MAD CK 0039
In the Madras High Court

Krishna Udayan

APPELLANT

Vs

Chinna Pillai

RESPONDENT

Date of Decision : 22-09-1947

Acts Referred:

Citation : AIR 1948 Mad 416 : (1948) 61 LW 130 : (1948) 1 MLJ 119

Hon'ble Judges : Shahabuddin, J

Bench : Division Bench

Judgement

Shahabuddin, J.—This petition arises out of an application for setting aside an order passed ex parte on a reference (L.A.C. No. 7 of 1945) u/s 30 of the Land Acquisition Act. The petitioner and the respondent were claimants in respect of the amount awarded and the reference made in that connection to the Subordinate Judge of Salem u/s 30, stood posted to the 24th of August, 1945, when the respondent filed his statement. The proceedings were then adjourned to 19th September, 1945. On that day, the respondent was absent and an adjournment asked for on his behalf was granted till 2nd October, 1945, on condition that he paid Rs. 4 to the petitioner as costs for the day. But on 2nd October, 1945, the respondent was again absent and his vakil reported "No, instructions. The day costs was not paid. The petitioner then proved his claim and an order was passed in his favour, the Court holding that he was entitled to the amount in dispute. The respondent thereupon filed a petition under Order 9, Rule 13 of the CPC to set aside the order passed in favour of the petitioner. The Subordinate Judge dismissed this petition taking the view that the order disposing of the reference u/s 30 of the Land Acquisition Act was one on merits and fell under Order 17, Rule 3, CPC in view of the fact that the respondent who had been asked to pay the day costs committed default. He appears to have regarded the direction regarding day costs as a condition pre-cedent. On appeal by the respondent the learned District Judge held that the Order in L.A.C. No. 7 of 1945 was an order passed ex parte coming within Rule 2 of Order 17, Civil Procedure Code. He therefore remanded the application for disposal on the merits as the learned Subordinate Judge had not considered the question whether the respondent had

sufficient cause for his non-appearance on the 2nd October. It is against this order of remand that this Civil Revision Petition has been filed.

2. It is contended on behalf of the petitioner that in respect of proceedings u/s 30 of the Land Acquisition Act the only remedy open to a claimant is to treat the order against him as part of the award and appeal u/s 54 of the Land Acquisition Act to this Court, and that Order 9, Rule 13, CPC does not apply to such proceedings. This contention cannot be accepted in view of the decision of a Bench of this Court in Chikkanna Chettiar alias V.S. Nanjappa Chettiar Vs. V.S. Perumal Chettiar and Another, . There, it was held that a Subordinate Judge appointed by the Provincial Government u/s 3 (d) of the Land Acquisition Act to decide a dispute referred u/s 30 of the Act is a Civil Court and that the decision therein is a decree and an appeal lies from such decision as an appeal against a decree. It is there observed that in the light of the Privy Council decision in 26 CWN 713 (Privy Council) an order determining a reference u/s 30 is to be regarded as a decree and not as an award. In this view the order of the Subordinate Judge passed on 2nd October, 1945, is a decree, and consequently Order 9, Rule 13, CPC which empowers the Court to set aside a decree passed ex parte does apply. I therefore consider that the application before the learned Subordinate Judge for setting aside this order was competent.

3. It is then argued that even if Order 9, Rule 13, CPC applies it does not follow that Order 43, Rule 1 (d) CPC under which orders under Rule 13 of Order 9 rejecting an application for setting aside an ex parte decree are appealable, is applicable as the right of appeal is a creature of the statute and there is no provision in the Land Acquisition Act conferring such a right on a claimant. In support of this contention reliance is placed on the decision of a Bench of this Court in Neelam Suryanarayanamurti Naidu and Others Vs. Boggavarapu Satyanarayanamurti and Others, where in respect of an application under the Madras Agriculturists' Relief Act it was held that although Section 19-A Sub-section (8) of that Act made the provisions of Order 9, Rule 13 applicable to proceedings under the Act it could not attract the right of appeal conferred under Order 43, Rule 1 (d) Civil Procedure Code. But this decision in my opinion does not apply to the facts of the present case. There, two provisions were considered with regard to the appealability of an order declining to set aside an ex parte order passed under Act IV of 1938 : one was Section 141 of the CPC and the other Sub-section (8) of Section 19-A of the Agriculturists' Relief Act and it was observed that it was difficult to see how either of these provisions which only made the procedural provisions of the Code applicable to proceedings under the Act should attract the substantive right of appeal. Section 141 of the CPC makes the procedure provided in the Code in regard to suits applicable as far as it can be made applicable to all proceedings in any Court of Civil Jurisdiction. Similarly, Sub-section (8) of Section 19-A of the Agriculturists' Relief Act is to the effect that the procedure laid down in the CPC for the trial of a suit shall as far as may be, apply to applications under that section. But Section 53 of the Land Acquisition Act which governs the present case is not as restrictive as either of

the abovementioned provisions. Section 53 is in these words:

Save in so far as they may be inconsistent with anything contained in this Act the provisions of the CPC shall apply to all proceedings before the Court under this Act.

4. I have not been shown any provision in the Land Acquisition Act which is inconsistent either with Order 9, Rule 13 or with Order 43, Rule 1 (d), Civil Procedure Code. I therefore consider that the appeal to the District Judge was competent.

5. Lastly, it is argued that the disposal of the reference was under Order 17, Rule 3 and not Order 17, Rule 2, CPC and therefore the learned Subordinate Judge was right in dismissing the application. I am unable to accept this contention also. It is no doubt true that the respondent did not pay the petitioner the day costs as directed on 19th September, 1945, but it does not appear from the order awarding those costs that its payment was a condition precedent. Even if it were, it is clear from the Bench decision in *Ellammal and Others Vs. A.R. Karuppan Chetti*, relied on by the learned District Judge that:

Where no default occurring under Rule 2, default occurs under Rule 3, the Court should proceed under the latter provision and dispose of the case on the merits.; but if the default consists in non-appearance, it is Rule 2 which deals with such a case specifically that in terms applies.

6. The decision of a single Judge in *Virayya v. Nagayya* (1936) M.W.N. 1230 cited by the learned Subordinate Judge does not appear to apply to the facts of the present case. There, the parties were represented and there was no default of appearance.

7. I therefore see no reason to interfere. The Civil Revision Petition is dismissed with costs.