

(2009) 02 MAD CK 0136

In the Madras High Court

Case No : C.R.P. (PD) No. 779 of 2008 and M.P. No. 1 of 2008

N.A. Shanmugasundaram, P. Selvaraj and N. Kalisamy

APPELLANT

Vs

Vignesh Kumar and Priyanka

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 3(1), Order 17 Rule 1(1), Order 17 Rule 2, Order 20 Rule 1, Order 43 Rule 1
Limitation Act, 1963 — Article 123, 137

Citation : (2009) 02 MAD CK 0136

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : S. Raghu, for the Appellant; N. Manoharan, for the Respondent

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—The defendants 3 to 5 in O.S. No. 3257 of 2004 are the revision petitioners before this Court.

2. O.S. No. 3257 of 2004 (originally filed in O.S. No. 945 of 1997) was filed by the respondents/plaintiffs for partition, separate possession and also for consequential injunction.

3. The suit was posted for filing written statement of the defendants 3 to 5 on 27-03-2000. But the same was not filed on that day and the defendants 3 to 5 were set ex-parte in the suit on 27-03-2000. An application, in I.A. No. 37 of 2006 was filed under Order IX Rule 7 CPC to set aside the ex-parte order dated 27-03-2000. I.A. No. 37 of 2006 was dismissed by the trial Court on 05-07-2006, against which, a revision in CRP. No. 12260 of 2006 was filed and this Court dismissed the revision petition on 18-12-2006.

4. Thereafter, on 28-02-2007, the defendants 3 to 5 filed an application in I.A. No. 631 of 2007, u/s 151 CPC, praying to permit them to take part in the further proceedings of the suit from the adjourned stage of the suit. It is stated in the

affidavit filed in support of I.A. No. 631 of 2006 that, after the dismissal of the CRP. No. 12260 of 2006 by this Court on 18-12-2006, they could not claim to be relegated to the position that they occupied at the commencement of trial. But, the suit is only in an adjourned hearing stage and the arguments are yet to be commenced. They are legally entitled to part-take in the further proceedings of the above suit from the adjourned stage onwards, for which, the ex-parte order passed on 27-03-2000 need not be held against them. Hence, they filed I.A. No. 631 of 2007 for the aforesaid relief.

5. This was resisted by the respondents/plaintiffs by filing a counter contending that as the order dated 18-12-2006 made in CRP. No. 12260 of 2006 by the High Court has reached its finality, the revision petitioners could not maintain the application as the order passed in the CRP would operate as res judicata. The trial Court by order dated 24-01-2008 accepted the objections raised by the respondents/plaintiffs and accordingly dismissed the application. The trial Court further found that I.A. No. 631 of 2007 was filed after six years from the date when they were set ex-parte and therefore, they could not maintain the application. Aggrieved by the order of the trial Court, the above revision has been filed by the defendants 3 to 5 in the suit.

6. On 26-02-2008, this Court ordered notice regarding admission and granted interim stay in M.P. No. 1 of 2008. The respondents entered appearance through their counsel.

7. Heard the learned Counsel for the revision petitioners and the learned Counsel for the respondents. I have also perused the entire materials available on record.

8. The learned Counsel for the revision petitioners submits that under Order IX Rule 6 CPC, when the defendant does not appear when the suit is called for hearing after summons were duly served, the Court may make an order that the suit be heard ex-parte. Under Order IX Rule 7, when the Court adjourned that hearing of the suit ex-parte and the defendant appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if, he had appeared on the day fixed for his appearance. According to the learned Counsel, if the application filed under Order IX Rule 7 is dismissed, it does not mean that the defendants should not participate in further proceedings at all. His right to participate in the further proceedings has not been taken away by Order IX Rule 7 and therefore, the revision petitioners are entitled to participate in the further proceedings of the suit. In support of his submission, the learned Counsel relied on the decision of the Honourable Supreme Court reported in Arjun Singh Vs. Mohindra Kumar and Others, and Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, He also relied on a judgment of the Honourable Kerala High Court in 2003 AIHC 440 Moulasab v. Mohammad Hasim (deceased by LRS) and Ors.

9. Per contra, the learned Counsel for the respondents/plaintiffs submits that the

dismissal of the application filed under Order IX Rule 7 which was upheld by the High Court will operate as a res judicata and therefore, the trial Court has rightly dismissed the application. He relied on the judgment of the Honourable Supreme Court reported in Chhabil Das Vs. Pappu, in this regard. By placing reliance on a decision of this Court reported in Rajaji Vs. R. Krishnaji, , the learned Counsel further contended that the present application filed by them after nearly six years is barred by limitation also, as the prescribed period of limitation for an application under Order IX Rule 7 shall be governed by residuary clauses contained under Article 137 of the Limitation Act, according to which, the application should have been filed within three years.

10. I have considered the rival submissions carefully with regard to facts and citations.

11. To answer the question involved in the above CRP, it is useful to refer to Order IX Rule 6 and Order IX Rule 7 CPC.

Rule 6: Procedure when only plaintiff appears:- (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

(a) When summons served duly served- It if is proved that the summons was duly served, the Court may make an order that the suit be heard ex-parte.

(b) When summons not duly served:- If it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant.

(c) When summons served but not in due time:-If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Rule 7:- Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance:-Where the Court has adjourned the hearing of the suit ex-parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

12. As early as in the year 1955, the Honourable Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, observed as under:

Para: 23. Our attention was drawn to Rule 6(2) and it was argued that Order 9 does contemplate the imposition of penalties. But we do not read this portion of the rule in that light. All that the plaintiff has to do here is to pay the costs

occasioned by the postponement which in practice usually means the cost of a fresh summons and the diet money and so forth for such of the witnesses as are present: and these costs the plaintiff must pay irrespective of the result.

Para: 24. Rule 1 of Order 9 starts by saying

On the day fixed in the summons" for the defendant to appear" and answer..." and the rest of the rules in that Order are consequential on that. This is emphasised by the use of the word "postponement" in Rule 6(1)(c), of "adjournment" in Rule 7 and of "adjournment" in R.I. Therefore, we reach the position that Order 9, Rule 6(1)(a), which, is the rule relied on, is confined to the first hearing of the suit and does not "per se" apply to "subsequent hearings?" see - Zeinalabdin Khan v. Ahmed Raza Khan 5 Ind App 233 at p. 236 (PC) (1).

Para. 25. Now to analyse Rule 6 and examine its bearing on the first hearing. When the plaintiff appears and the defendant does not appear when the suit is called on for hearing, if it is proved that the summons was duly served

(a). ...the Court may proceed "ex-parte"

The whole question is, what do these words mean? Judicial opinion is sharply divided about this. On the one side is the view propounded by Wallace, J, in Gokarakonda Venkatasubbiah Vs. Daliparthi Lakshminarasimham, ", that "ex parte" merely means in the absence of the other party, and on the other side is the view of O'Sullivan, J., in AIR 1945 Sind 98 at p. 102 (D)", that it means that the Court is at liberty to proceed without the defendant till the termination of the proceedings unless the defendant shows good cause for his non-appearance. The remaining decisions and there are many of them, take one or the other of those two views.

Para. 26. In our opinion, Wallace, J., and the other Judges who adopt the same line of thought are right. As we have already observed, our laws of procedure are based on the principle that, as far as possible, no proceeding in a Court of law should be conducted to the detriment of a person in his absence. There are of course exceptions, and this is one of them. When the defendant has been served and has been afforded an opportunity of appearing, then, if he does not appear, the Court may proceed in his absence. But, be it noted, the Court is not directed to make an "ex parte" order.

Of course the fact that it is proceeding "exparte" will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an "ex parte" decree or other "ex parte" order which the Court is authorised to make. All that Rule 6(1) (a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority namely to proceed in the absence of one of the parties. The contrast in language between Rule 7 and Rule 13 emphasises this.

Para. 27. Now, as we have seen, the first hearing is either for the settlement of

issues or for final hearing. If it is only for the settlement of issues, then the Court cannot pass an "ex parte" decree on that date because of the proviso to Order 15 Rule 3(1) which provides that that can only be done when "the parties or their pleaders are present and none of them objects."

On the other hand, if it is for final hearing an "ex parte" decree can be passed, and if it is passed, then Order 9, Rule 13 comes into play and before the decree is set aside the Court is required to "make an order to set it aside". Contrast this with Rule 7 which does not require the setting aside of what is commonly, though erroneously, known as "the "ex parte" order."

No order is contemplated by the Code, and therefore no order to set aside the order is contemplated either. But a decree is a command or order of the court and so can only be set aside by another order made and recorded with due formality.

Para. 28. Then comes Rule 7 which provides that if at "an adjourned hearing" the defendant appears and shows good cause for his ""previous" non-appearance", he can be heard in answer to the suit.

as if he had appeared on the day fixed for his appearance.

This cannot be read to mean, as it has been by some learned Judges, that he cannot be allowed to appear at all if, he does not show good cause. All it means is that he cannot be relegated to the position he would have occupied if he had appeared.

Para. 29. We turn next to the "adjourned" hearing. That is dealt with in Order 17, Rule 1(1) empowers the Court to adjourn the bearing and whenever it does so it must fix a day "for the further hearing of the suit", except that once the hearing of the evidence has begun it must go on from day to day till all the witnesses in attendance have been examined unless the Court considers, for reasons to be recorded in writing, that a further adjournment is necessary. Then follows Rule 2.-

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9 or make such other order as it thinks fit.

Para. 30. Now Rule 2 only applies when one or both of the parties do not appear "on the day fixed" for the adjourned hearing". In that event, the Court is thrown back to Order 9 with the additional power to make "such order as it thinks fit". When it goes back to Order 9 it finds that it is again empowered to proceed "ex parte" on the adjourned hearing in the same way as it did, or could have done, if one or other of the parties had not appeared at the first hearing, that is to say, the right to proceed "ex parte" is a right which accrues from day to day because at each adjourned hearing the Court is thrown back to Order 9, Rule 6.

It is not a mortgaging of the future but only applies to the particular hearing at which a party was afforded the chance to appear and did not avail himself of it. Therefore, if a party does appear on "the day to which the hearing of the suit is adjourned", he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing.

Para. 31. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order 9, Rule 7 makes that clear. Therefore, unless he can show good cause, he must accept all that has gone before and be content to proceed from the stage at which he comes in. But what exactly does that import? To determine that it will be necessary to hark back to the first hearing.

13. From the above judgment, it is very clear that if a party does appear on the date to which the hearing of the suit is adjourned, he cannot be stopped from participating in the proceedings simply because he did not appear on some other hearing. But, this right to appear on an adjourned hearing will not give him the right to set back the hands of the clock. He must also accept all that has gone before and he should only proceed from the stage at which he comes in.

14. In *Arjun Singh Vs. Mohindra Kumar and Others*, the Honourable Supreme Court following the judgment reported in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, held (referred above) as under:

Para. 13. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceeding before the court usually take. They do not in that sense decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of *res judicata* does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the Court would be justified in rejecting the same as an abuse of the process of Court. There are other orders which are also interlocutory, but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication, but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under Order IX, Rule 7, would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the

order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate Court. In that sense, the refusal of the Court to permit the defendant to "set the clock back" does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages, so as to preclude its being reconsidered. Even if the rule of *res judicata* does not apply, it would not follow that on every subsequent day on which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the Court does not however necessarily rest on the principle of *res judicata*. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of *res judicata*, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of *res judicata* and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of *res judicata* is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issues, whereas in the other case, on proof of fresh facts, the court would be competent, nay would be bound to take those into account and make an order conformably to the facts freshly brought before the Court.

Para. 14. This leads us to the consideration of the nature of the Court's direction under Order IX, Rule 7 - the nature of that interlocutory proceeding with a view to ascertain whether the decision of the Court under that provision decides anything finally so as to constitute the bar of *res judicata* when dealing with an application under Order IX, Rule 13, Civil Procedure Code. To sum up the relevant facts, it is common ground that the suit 134 of 1956 had passed the stages up to Rule 5 of Order IX. Order IX, Rule 6 applies to a case where a plaintiff appears and the defendant does not appear when the suit is called on for hearing. Order IX, Rule 6 provides, to quote the material part

Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing then -

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;....

This is the provision under which the Civil Judge purported to act on the 29th of May. And then comes Order IX, Rule 7 which reads:

Where the Court has adjourned the hearing of the suit *ex parte* and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the

day fixed for his appearance.

On that very date the Court took evidence of the plaintiff and reserved judgement. In other words, the hearing had been completed and the only part of the case that remained thereafter was the pronouncing of the judgement. Order XX, Rule 1 provides for this contingency and it reads:

The Court, after the case has been heard, shall pronounce judgement in open Court, either at once or, as soon thereafter as may be practicable, on some future day; and when the judgement is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.

Two days after the hearing was completed and judgement was reserved the defendant appeared and made the application purporting to be under Order IX, Rule 7. And it is the dismissal of this application that has been held to constitute a bar to the hearing of the application under Order IX, Rule 13 on the merits.

Para. 15. The scope of a proceeding under Order IX, Rule 7 and its place in the scheme of the provisions of the Code relating to the trial of suits was the subject of consideration in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . Dealing with the meaning of the words "The Court may proceed ex parte" in Order IX, Rule 6(1)(a) Bose, J. speaking for the Court said:

"When the defendant has been served and has been afforded an opportunity of appearing, then if he does not appear, the Court may proceed in his absence. But, be it noted, the Court is not directed to make an ex parte order. Of course the fact that it is proceeding ex parte will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an ex parte decree or other ex parte order which the Court is authorised to make. All that Rule 6(1)(a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority, namely to proceed in the absence of one of the parties." Dealing next with the scheme of the Code, the learned Judge pointed out that the manner in which the Court could thereafter proceed i.e. after Rule 6(1)(a) was passed would depend upon the purpose for which the suit stood adjourned and proceeded:

If it is for final hearing, an ex parte decree can be passed, and if it is passed, then Order IX, Rule 13 comes into play and before the decree is set aside the Court is required to make "make an order to set it aside". Contrast this with Rule 7 which does not require the setting aside of what is commonly, though erroneously, known as "the ex parte order". No order is contemplated by the Code and therefore no order to set aside the order is contemplated by either" (*Italics (here into") ours*).

and referring to the effect of the rejection of application made under Order IX, Rule 7, he added:

If a party does appear on the day to which the hearing of the suit is adjourned, he cannot be stopped from participating in the proceedings, simply because he did not appear on the first or some other hearing. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order IX, Rule 7 makes that clear. Therefore, unless he can show good cause, he must accept all that has gone before and be content to proceed from the stage at which he comes in.

That being the effect of the proceedings, the question next arises what is the nature of the order if it can be called an order or the nature of the adjudication which the Court makes under Order IX, Rule 7? In its essence it is directed to ensure the orderly conduct of the proceedings by penalising improper dilatoriness calculated merely to prolong the litigation. It does not put an end to the litigation nor does it involve the determination of any issue in controversy in the suit. Besides it is obvious that the proceeding is of a very summary nature and this is evident from the fact that as contrasted with Order IX, Rule 9 or Order IX, Rule 13, no appeal is provided against action of the Court under Order IX, Rule 7, "refusing to set back the Clock". It is, therefore, manifest that the Code proceeds upon the view not imparting any finality to the determination of any issues of fact on which the Court's action under that provision is based. In this connection reference may be made to a decision of a Division Bench of the Madras High Court in *Sankaralinga v. Ratnasabhapati* ILR 21 Mad 324. The question arose on an appeal to the High Court by the defendants against whom an ex parte decree had been passed on March 30, 1895. Previous thereto they had put in petitions supported by affidavits u/s 101 of the CPC corresponding to Order IX, Rule 7 to set aside "an ex parte order ", accept their written statements, and proceed with the suit on the merits. The ground alleged for the relief sought was that they were not duly served with summons. This application was rejected by the Court. Thereafter, after an ex parte decree was passed, they again filed another application u/s 108 under the then code, corresponding to the present Order IX, Rule 13. The ground put forward was again the same, namely that the summons was not properly served. The District Judge having dismissed the application u/s 108 (Order IX Rule 13), the defendants preferred an appeal to the High Court. On behalf of the plaintiffs-respondents the contention was raised by Mr. Bhashyam Ayyangar, learned Counsel, that the application to set aside the ex parte decree u/s 108 was incompetent because the same question had already been decided against the defendant when he filed the application u/s 101. The Court composed of Subramania Iyer and Benson, JJ. said,

the contention at first sight may seem to be reasonable, but having regard to the very wide words "in any case" used in Section 108 we are unable to hold that the defendant was not entitled to make an application u/s 108.

There have been other decisions in which a similar view has been held and though the provisions of the Code corresponding to Order IX, Rule 7 and Order IX, Rule 13 have been in force for over a century from 1859, there has not been

a single case in which the plea of *res judicata* such as has been urged in the appeal before us has been upheld. On the other hand, we might point out that an exactly similar objection of *res judicata* was expressly raised and repelled in *Bhaoo Patel v. Naroo* 10 CPLR 45 and in a decision rendered in 1896 in which reliance was placed on a case reported in *Ashruffunnissa v. Lehareau* ILR 8 Cal 272.

Para. 16. In the circumstances we consider that a decision or direction in an interlocutory proceeding of the type provided for by Order IX, Rule 7, is not of the kind which can operate as *res judicata* so as to bar the hearing on the merits of an application under Order IX Rule 13. The latter is a specific statutory remedy provided by the Code for the setting aside of *ex parte* decrees, and it is not without significance that under Order XLIII, Rule 1(d) an appeal lies not against orders setting aside a decree passed *ex parte* but against orders rejecting such an application unmistakably pointing to the policy of the Code being that subject to securing due diligence on the part of the parties to the suit, the Code as far as possible makes provision for decisions in suits after a hearing afforded to the parties.

15. In the above judgment, the Honourable Supreme Court held that if the defendant does not show good cause for his non-appearance on the previous day and his application filed under Order IX Rule 7 is dismissed, he is not penalised in the sense of being forbidden to take part in the further proceedings of the suit (or) whatever might still remain of the trial. But, he could not claim to be relegated to the position that he occupied at the commencement of the trial.

16. In 2003 AIHC 440 (cited *supra*) the Karnataka High Court observed as under:

Para. 2: It appears that the original defendant No. 2 had died on 13-05-2002 and notice to his legal representatives was issued in the suit and since they did not appear, the suit was adjourned after declaring them *ex-parte*. Subsequently during the pendency of the suit, they appeared and made an application under Order 9, Rule 7 of CPC to permit them to appear and defend in the case. The Court below allowed the application, obviously with an intent to afford them an opportunity to resist the claim of the plaintiff. It would be of some relevance to note here itself that the *ex-parte* order only covers the period during which the defendant was actually absent and it did not act as a bar to his resuming appearance in the suit at the stage at which it then was, if he appeared subsequently and wanted to put forward his evidence. That is to say, if the defendant wants to proceed from the stage already reached, he will have an absolute right without obtaining the permission of the Court to take part in the proceedings. Order-9, Rule 7 of CPC does not mean that defendant cannot be allowed to appear at all if he does not show good cause. All it means is that he cannot be relegated to the position he would have occupied if he had appeared. He cannot be stopped from participating simply because he did not appear in the first or some other hearing. He will have to show good cause for his previous absence and get the *ex-parte* order set aside only if he desires to be relegated

back to the position in which he would have been put if he has appeared at the previous proceedings so that the proceedings in his absence could be re-opened.

17. From the above judgment, it is clear that even if the application filed by the defendant under Order IX Rule 7 is dismissed, still the defendant has got a right to proceed from the stage already reached and he will have an absolute right without obtaining the permission of the Court to take part in the proceedings. Therefore, I am of the considered view that the trial Court has wrongly rejected the application filed by the revision petitioners to take part in the further hearing of the suit.

18. Now, let me consider the decision of the Supreme Court reported in 2006 (5) CTC 606 (cited supra) relied on by the learned Counsel for the respondents. In that judgment, the Supreme Court held that the principle of res judicata also applies in different stages of the same proceedings. This is a settled principle of law and the same is not at all applicable to the facts of the present case. So is the decision reported in 2005 (3) MLJ 379, (cited supra) wherein a suit is one for partition, a Receiver was appointed at the instance of the plaintiff and another petition was filed for the appointment of Receiver in respect of another property. On the date of hearing of that petition, there was no representation on behalf of the defendant and therefore, the application was allowed. Thereafter, the defendant filed a petition under Order IX Rule 7 to set aside the ex-parte order and the same was dismissed on the ground of limitation and only in that context, this Court held when Article 123 applies only to ex-parte decree, the trial Court was not right in holding that the application filed under Order IX Rule 7 beyond 30 days is not maintainable. Thus, it is evident that the facts in the case are totally different and this decision is not at all helpful to the case of the respondents.

19. Therefore, I am inclined to allow the Civil Revision Petition by setting aside the order of the trial Court dated 24-01-2008. Consequently, I.A. No. 631 of 2007 filed by the revision petitioners is allowed. At the same time, it is made very clear that the revision petitioners could participate only when there is some hearing is pending before the trial Court.

20. In the result, the Civil Revision Petition is Allowed. No costs. Consequently, M.P. No. 1 of 2008 is also closed.