R.O.C.No.975/2019/RG/F1 **P.Dis.No.38/2019**

CIRCULAR

Sub: High Court, Madras – Judgment, passed in a Civil Miscellaneous Appeal – Necessity of issuing notice of hearing to the parties over transfer of cases from one Court to another, reiterated – Registry directed to issue instructions – Circular issued – Reg.

Ref: Judgment, dated 13.02.2019 passed in C.M.A.No.2460/2015 and M.P.No.1/2015.

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The Hon'ble Madras High Court, while allowing C.M.A.No.2460/2015 and M.P.No.1/2015, vide Judgment dated 13.02.2019, at Paragraph No.15 thereof, has reiterated the necessity of issuing notice of hearing to parties on transfer of cases from one Court to another, on account of constitution of new Courts, bifurcation of jurisdiction, etc., and also directed the Registry to circulate the Judgment rendered by the Madras High Court in ELLAPURAM PANCHAYAT UNION VS. SRI BHAVANIAMMAN DEVASTHANAM, reported in 1994 LW 256 (wherein, the necessity of issuing notice of hearing to parties when cases are transferred from one Court to another is emphasized), to all the Civil Courts and also to issue instructions accordingly.

As directed, all the Civil/Subordinate Courts in the State of Tamil Nadu and the Union Territory of Puducherry are hereby directed/instructed to take notice of the dictum laid down in the aforesaid two cases of the Madras High Court, for due compliance and adherence.

Receipt of this Circular shall have to be acknowledged at once.

HIGH COURT, MADRAS
DATED: 21 /03/2019

REGISTRAR GENERAL

To

1. All the Principal District Judges / District Judges.
2. The Principal Judge, City Civil Court, Chennai.
3. The Chief Judge, Puducherry.
4. The District Judge-cum-Chief Judicial Magistrate, The Nilgiris at Uthagamandalam
5. The Chief Judge, Court of Small Causes, Chennai.

} with a request to communicate the Circular to all the Civil Courts under your jurisdiction.

6. The Director, Tamil Nadu State Judicial Academy, R.A.Puram, Chennai-28.
7. The Section Officer, "F" Section, Madurai Bench of Madras High Court, Madurai.
8. The Record Keeper, A.D.Records, High Court, Madras.

R.O.C.No.975/2019/RG/F1

P.Dis.No. 38/2019
Dated: 21/03/2019

From

C.Kumarappan, B.Sc.,B.L.,
Registrar General,
High Court, Madras–104.

To

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Sir,

Sub: High Court, Madras – Judgment passed in a Civil Miscellaneous Appeal - Registry directed to communicate the order/case-law in ELLAPURAM PANCHAYAT UNION VS. SRI BHAVANIAMMAN DEVASTHANAM [reported in 1994 LW 256] to all the Civil Courts – Copy communicated – Reg.

Ref: Judgment, dated 13.02.2019, passed in C.M.A.No.2460 of 2015 and M.P.No.1/2015.

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As directed, I am to forward herewith copy of the Judgment cited, along with the Case-Law in ELLAPURAM PANCHAYAT UNION VS. SRI BHAVANIAMMAN DEVASTHANAM, reported in 1994 LW 256, for information regarding the dictum laid down therein on the necessity of issuing Notice of hearing to the parties when cases are transferred from one Court to another, etc., and for due compliance.

Sd/- C.Kumarappan
REGISTRAR GENERAL

/True Copy/

21/3/19

SUB ASSISTANT REGISTRAR(COFEPOSA)

To

1. All the Principal District Judges / District Judges.
2. The Principal Judge, City Civil Court, Chennai.
3. The Chief Judge, Puducherry.
4. The District Judge-cum-Chief Judicial Magistrate, The Nilgiris at Uthagamandalam
5. The Chief Judge, Court of Small Causes, Chennai.

} with a request to communicate the enclosed order to all the Civil Courts, under your jurisdiction.

6. The Director, Tamil Nadu State Judicial Academy, R.A.Puram, Chennai-28.
7. The Section Officer, "F" Section, Madurai Bench of Madras High Court, Madurai.
8. The Record Keeper, A.D.Records, High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.2460 OF 2015
AND M.P.NO.1 OF 2015

Dayanandhini ... Appellant/2nd Defendant

Vs.

K.Mala ... Respondent/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (d) of Civil Procedure Code against the order dated 12.10.2015 passed in I.A.No.115 of 2013 in O.S.No.9904 of 2010 on the file of the XVII Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.Muralikumaran
for M/s.McGAN Law Firm

For Respondent : Mr.V.Athikesaran

F/975

J U D G M E N T

Aggrieved over the order dated 12.10.2015 passed in I.A.No.115 of 2013 in O.S.No.9904 of 2010 by the learned XVII Additional Judge, City Civil Court, Chennai, the appellant is before this Court.

2. The appellant is the second defendant in the suit filed by the respondent for partition in C.S.No.1145 of 2008. Originally, the suit was instituted on the Original Side of this Court. Due to amendment of the rules, the pecuniary jurisdiction was conferred on the City Civil Court and accordingly, C.S.No.1145 of 2008 was transferred to the City Civil Court, Chennai. Since the appellant / second defendant did not appear before the City Civil Court, she was set exparte on 28.02.2011. Thereafter, the suit was dismissed on 23.06.2011 for non-appearance of the respondent / plaintiff. Thereafter, the respondent / plaintiff has filed an application to restore the suit, after getting an order to dispense with the service of notice to the appellant / second defendant. The suit was restored and exparte decree came to be passed on 17.08.2012. When the appellant/second defendant came to know of the exparte decree, she filed a petition to set aside the exparte decree from the date of her knowledge in I.A.No.115 of 2013. The said application was dismissed by the Trial Court on 12.10.2015 on the ground that sufficient cause was not shown for not filing the application from the date of decree and that no notice is

required to the parties by the transferee Court, after the suit is transferred from one Court to some other Court. Challenging the same, the appellant is before this Court.

3. From the perusal of the materials, it is seen that the transfer of the Civil Suit viz., C.S.No.1145 of 2008 from the file of this Court to the City Civil Court, Chennai, was not made known to the parties. Neither the appellant / second defendant nor the respondent / plaintiff were aware of such transfer. At the first instance, the appellant / second defendant was set exparte and thereafter, the suit was dismissed for default for non appearance of the respondent / plaintiff on 23.06.2011.

4. The sum and substance of the above fact is that both the parties were not having any knowledge about the transfer of the Civil Suit from this Court to the City Civil Court, Chennai, details of renumbering and the hearing of the Civil Suit before the City Civil Court, Chennai. Thereafter, at the first instance, the appellant / second defendant was set exparte and later, the suit was dismissed for default. Unfortunately, notice to the appellant / second defendant was also dispensed with, as she was set exparte. At this juncture, it has to be decided as to whether notice to the parties by the transferee Court is necessary on transfer of Suits from one Court to some other Court, peculiarly, when the transfer is happened because of the change in pecuniary jurisdiction.

5. This Court, in a similar circumstance, in ELLAPURAM PANCHAYAT UNION VS. SRI BHAVANIAMMAL DEVASTHANAM [1994 LW 256] has held as under:

> "9. It would be a very salutary practice if even in cases of appeals transferred from one Sub Court to another owning to exigencies of workload, a notice to that effect should be given to the parties informing them that the appeal which was pending before one Court has since been transferred to another Court. No provision to this effect either under the C.P.C., or under the Civil Rules of Practice and Circular Orders has been brought to the notice of the Court by the counsel on either side. Since a party to a litigatin before any Court should know where it is pending and when it is likely to be taken up, it is essential that parties must be informed by the transferee Court in order to enable them to appear before the transferee court and contest the proceedings so transferred by engaging other counsel and taking necessary steps in that

regard. In the absence of any provision to that effect either under the C.P.C., or under the Civil Rules of Practice and Circular Orders, every effect should be made by Courts to put the litigants on notice of the transfer of pending litigation, be it the trial Court or the appellate Court as the case may be. It is very necessary and desirable - nay, even imperative till such time as provisio in this regard is made either under the C.P.C., or under the Civil Rules of Practice and Circular Orders that there should be an inflexible adherence to this requirement regarding notices; as otherwise, Courts cannot adjudicate upon the rival claims of the litigants before it after giving an effective and adequate hearing to both sides, which is the bedrock of our system of administration of justice."

6. On a perusal of the above judgment, it is seen that the learned Judge has clearly explained the requirement of service of notice, even though there is no provision under the Civil Procedure Code or Civil Rules of Practice to issue such a notice.

7. The case on hand is a classic example that neither the applicant/second defendant nor the respondent / plaintiff were aware of the transfer of the suit and the consequential renumbering of the suit on transfer and also, to which Court it was allotted. Over and above this, the hearing date was also not informed by the transferee Court. In many cases, even the counsel on record were not aware of the development of their case on transfer and renumbering of the suits. Unless they follow it scrupulously, they may not be aware of the date of hearing. When such is the situation even for the counsel on record, the situation of the litigants would be very pitiable.

8. As held by this Court in ELLAPURAM PANCHAYAT UNION's case (cited supra) even though there is no statutory provision, it is advisable to issue notice to the litigants on transfer of the suit from one Court to other Court, either on account of pecuniary jurisdication or territorial jurisdiction or even due to work load and thereafter to take up the case for further proceedings.

9. Secondly, the point raised by the appellant/second defendant is that she had clearly explained the reasons as to why she was not aware of the date of hearing on such transfer. She filed the application within thirty days from the date of her knowledge. It is quite obvious that in the absence of any notice or information by the counsel, particularly to both sides, they may not be aware of the date of hearing. In such a

situation, they could file the application only from the date of knowledge of the decree. It is not new to this Court to entertain applications from the date of knowledge of the decree.

10. In a judgment of this Court in INTERNATIONAL COTTON TRADERS VS. P.NARAYANASWAMI [AIR 1979 MADRAS 36] it is held that when summons or notices are not duly served, it is open to the parties to file an application from the date of knowledge of the decree.

> "Under Art.123 that starting points of limitation are two. One is the date of the decree and the other is the date of the knowledge of the decree. With reference to the second, the condition to be satisfied is that no summons or notice should have been duly served. Thus, a person applying for setting aside an exparte decree can claim that the period of limitation should commence from his knowledge of the decree only in a case where the summons or notice was not duly served. In other cases, limitation commences from the date of the decree itself."

11. The Hon'ble Supreme Court in N.BALAKRISHNAN VS. M.KRISHNAMURTHY [1998 (7) SCC 123] has categorically held as follows:

> "The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time - limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are menat to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

12. The Hon'ble Supreme Court has time and again has reiterated that the complete justice shall be done on merits rather than dismissing the cases on technicalities. The approach of the Trial Judge is one on technicalities. Such type of orders/judgments shall not be encouraged. When the parties were not put on notice, they are entitled to file application from the date of knowledge of such orders. Therefore, I have no hesitation to set aside the order passed by the Trial Court and restore the suit on file.

13. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 12.10.2015 passed in I.A.No.115 of 2013 in O.S.No.9904 of 2010 by the learned XVII Additional Judge, City Civil Court, Chennai is set aside. No costs. Consequently, connected miscellaneous petition is closed.

14. At this juncture, it is represented by the learned counsel appearing for both sides that they have arrived at a compromise. Therefore, let the matter be posted on 26.02.2019 for recording the compromise memo, before the XVII Additional Judge, City Civil Court, Chennai.

15. Registry is directed to circulate the judgment of this Court in ELLAPURAM PANCHAYAT UNION VS. SRI BHAVANIAMMAL DEVASTHANAM [1994 LW 256] to all the Civil Courts with instruction to issue notice to the parties on transfer of the suit, on account of constitution of new Courts bifurcation of jurisdiction, transfer of cases due to change in pecuniary jurisdication or territorial jurisdiction or even transfer due to work load, wherever it is necessary.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.The XVII Additional Judge
City Civil Court
Chennai.

2.The Registrar General,
High Court, Madras.

3.The Registrar (Judicial),
High Court, Madras.

4.The Section Officer,
'B' Section, High Court, Madras.

5.The Section Officer,
'G' Section, High Court, Madras.

6.The Section Officer,
'F'Section, High Court, Madras.

7.The Section officer,
Legal Cell, High Court, Madras.

+1cc to M/s.McGan Law Firm, Advocate, S.R.No.12910

CMA NO.2460 OF 2015

MP(CO)

rrs 25/02/2019

defendant are attending to agricultural operations is, therefore a mis-statement of the fact. He has not admitted that the other son is carrying on cultivation by the contribution of his own manual labour. Therefore, the finding of the learned Subordinate Judge that the defendant is an agriculturist within the meaning of the Act cannot be sustained.

9. Even assuming that the defendant is an agriculturist entitled to the benefits of the Act, he cannot claim the benefits of the Act, because he has not applied to the Authorised Officer within a period of two months from the date on which the dispute arose for the settlement of the dispute under S.4 as contemplated in R.3 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Rules, 1972, framed in exercise of the powers conferred by S.27 of the Act. If he had made such an application, the plaintiff would be entitled to the amount determined by the Authorised Officer as compensation payable to him. The defendant cannot apply after the lapse of a period of two months from the date on which the dispute arose, unless the delay is condoned by the Authorised Offiicer. The defendant has not yet applied to the Authorised Officer for the settlement of the dispute under S. 4 of the Act. He cannot have the best of both the worlds, viz., claim the benefits of the Act and also refuse to pay the compensation by merely not applying under R. 3 to the Authorised Officer for the settlement of the dispute under S. 4. In view of the discussion above, I find that the defendant is not an agriculturist, that even if he is an agriculturist, he is not entitled to the benefits of the Act, and that even if he is entitled to the benefits of the Act, he cannot claim the benefits now, because he has not applied to the Authorised Officer within two months from the date on which the dispute arose, viz, 22nd July, 1974 when a notice was issued by the plaintiff to him determining his tenancy and calling upon him to vacate.

10. In the result the second appeal is allowed, the judgment and decree of the learned Subordinate Judge in A.S. No. 109 of 1975 are set aside and the judgment and decree of the learned District Munsif, Sirkali in O.S. No. 741 of 1974 are restored with costs throughout,

VCS.

Ellapuram Panchayat Union, Periapalayam represented by its Commissioner

v.

Sri Bhavaniamman Devasthanam, represented by its Managing Trustee, P. S. Sethurathinammal

Ratnam, J.

24th February, 1981/C.R.P. 19 of 1981/Petition under S.115 of Act V of 1908 praying the High Court to revise the Order of the Court of the Subordinate Judge. Chingalpattu dated 3rd September, 1980 and made in I. A. No.140 of 1980 in A. S. No.188 of 1977.

Practice, C.P.C., *Or.41, Rr. 14 to 21*, Civil Rules of Practice and Circular Orders, *and S.24* —*Transfer of an appeal from one Court to another*—**Issue** *of notice to the parties by the transferee Court*, **held,** *is an imperative and desirable requirement in practice until provision is made therefor uuder the C.P.C., and Civil Rules of Practice*—**Held,** *on the facts, that the respondent in the appeal did have sufficient knowledge of the pendency of the appeal in the transferee Court and had failed to explain his absence, and therefore, his explanation that he was prevented by sufficient cause to appear in the appeal was not acceptable.*

It would be a very salutary practice in cases of appeals transferred from one Sub-Court to another owing to exigencies of workload, that a notice to that effect should be given to the parties informing them that the appeal which was pending before one Court has since been transferred to another Court. Since a party to a litigation before any Court should know where it is pending and when it is likely to be taken up, it is essential that parties must be informed by the transferee Court in order to enable them to appear before the transferee Court and contest the proceedings so transferred by engaging other counsel and taking necessary steps in that regard. In the absence of any provision to that effect either under the C.P.C., or under Civil Rules of Practice and Circular Orders, every effort should be made by Courts to put the litigants on notice of the transfer of pending litigation, be it the trial Court or the appellate Court as the case may be. It is very necessary and desirable—may, even imperative till such time as provision in this regard is made either under the C. P. C., or

under the Civil Rules of Practice and Circular Orders that there should be an inflexible adherence to this requirement regarding notice; as otherwise, courts cannot adjudicate upon the rival claims of the litigants before it after giving an effective and adequate hearing to both sides, which is the bedrock of our system of administration of justice.

[Para 9]

Held, further : in the instant case the petitioner undoubtedly had knowledge of the transfer of the appeal and even thereafter, the petitioner did not take any serious steps to defend the appeal. Under these circumstances, the explanation attempted by the petitioner that it was expecting a notice from tho transferee Court and that since it did not receive any such notice, it was unaware of the pendency of the appeal before that Court cannot be accepted. No doubt, the disposal of the appeal, in the absence of the petitioner herein, would nevertheless be an *ex parte* disposal under Or.41, R.17(2), C.P.C. But even so, the petitioner has not satisfied the court that notice was not duly served or that it was prevented by sufficient cause from appearing when the appeal was called on for hearing. The non-receipt of the notice which has been stated as the only ground is not an acceptable ground to restore the appeal.

[Paras 10, 11.]

C.R.P. dismissed.

Mr. *N.R. Chandran*, Additional Government Pleader II for Petr.

Mr. *R. D. Indrasenan* for Respt.

ORDER

1. The defendant in O.S. No.413 of 1972, District Munsif's Court, Tiruvellore, is the petitioner in this Civil Revision Petition. That suit was instituted by the respondent herein for a declaration that a passage leading to the Devasthanam in Periyapalayam belongs to it and also for an injunction. That suit was resisted by the petitioner herein on several grounds which need not be noticed in detail for purposes of the present Civil Revision Petition. Suffice it to say that the learned District Munsif, Tiruvellore, on a consideration of the oral as well as the documentary evidence, dismissed the suit instituted by the respondent on 30th July, 1973. Aggrieved by that the respondent preferred an appeal in A.S. No.178 of 1973 to the Sub-Court, Kancheepuram. In order to contest the appeal, the petitioner had engaged one Thiru C.M. Palanirajakumar as counsel. The Appeal A.S. No.178 of 1973 filed by the respondent herein before the Sub Court, Kancheepuram, was later transferred to the file of the II Additional Subordinate Judge, Chengalpattu, as per order, dated 6th December, 1977 in accordance with the proceedings of the District Judge. The appeal so transferred from Sub Court, Kancheepuram, to the Sub Court, Chengalpattu, was received by Sub Court, Chengalpattu, on 15th December, 1977 and re-numbered as A.S. No.188 of 1977 on its file and posted for hearing on 16th January, 1978. From 16th January, 1978 it was adjourned to 15th February, 1978 and on that day, Thiru D. K. Sampath, Advocate Chengalpattu, filed vakalat in the appeal on behalf of the respondent, and the appeal was adjourned to 27th Febuary, 1978. On 27th February, 1978, the petitioner was stated to be absent and the appeal was directed to be posted in the list for hearing on 17th April, 1978. From 17th April, 1978, the hearing of the appeal was adjourned to 18th April, 1978 and on 18th April, 1978, the appeal was further adjourned to 24th April, 1978. On 24th April, 1978, the notes paper indicates, "both not ready" and the appeal was thereafter adjourned to 12th July, 1978. From 12th July, 1978, the appeal was adjourned to 15th July, 1978, 20th July, 1978, 25th July, 1978, 27th July, 1978 and thereafter, to 29th July, 1978. On 29th July, 1978, arguments were heard and judgment was reserved and on 4th August, 1978, the learned Subordinate Judge, Chengalpattu, on a consideration of the merits, allowed the appeal setting aside the dismissal of the suit instituted by the respondent herein and decreeing it as prayed for. On 25th July, 1980, the petitioner filed I. A. No.140 of 1980 in A.S. No.188 of 1977, II Additional Sub-Court, Chengalpattu, to condone a delay of 690 days in filing an application to rehear the appeal. In the affidavit in support of that application, the petitioner referred to the filing of the appeal in A.S. No. 178 of 1973, Sub Court, Kancheepuram, by the respondent and the

engaging of a counsel by the petitioner. The petitioner further stated that the counsel so engaged by the petitioner informed the petitioner in 1977 that the appeal had been transferred to Sub Court, Chengalpattu. Even thereafter, the petitioner claimed that the petitioner was under the impression that a notice for the hearing of the Appeal will be sent by Sub Court, Chengalpattu, but that it did not receive any such notice and that the petitioner became aware of the result of the appeal only on 28th June, 1980. The petitioner thus claimed that the petition for restoration of the appeal had been filed within thirty days of the date of knowledge of the result of the appeal and prayed that the *ex parte* disposal of the appeal should be set aside and that the appeal should also be reheard on its merits.

2 That application was resisted by the respondent herein on the ground that even according to the petitioner, the petitioner was aware of the transfer of the appeal from Sub Court Kancheepuram, to the Sub Court, Chengalpattu, and that in spite of it, the petitioner did not take any steps whatsoever for defending the appeal. It was also poin ed out that the petitioner had been informed about the result of the appeal by the respondent by communications addressed to the petitioner by the Managing Trustee of the respondent. A further objection was also raised that before Sub Court, Chengalpattu, Thiru Varada Reddy, Advocate, offered to appear on behalf of the petitioner on 15th February, 1978. The respondent also contended that the disposal of the appeal was on the merits and not *ex parte* and that the petitioner has not satisfactorily explained everyday's delay.

3, The learned II Additional Subordinate Judge, Chengalpattu who enquired into this application, held that the petitioner has not satisfactorily explained the delay and that the disposal of the appeal was also on the merits, and, therefore, no ground was made out to restore and rehear the appeal, disposed of earlier on 4th August, 1978. It is the correctness of this order that is challenged in this Civil Revision Petition.

4. What is urged by the learned counsel for the petitioner on the strength of Or. 41, R. 17 (3), C.P.C. is that the disposal of the appeal A.S. No. 188 of 1977 by the Sub Court, Chengalpattu, is an *ex parte* disposal and that that appeal should be restored and reheard in the exercise of the power under Or. 41, R. 21, C.P.C. The learned counsel for the petitioner further submits that the petitioner was *bona fide* under the impression that a fresh notice of the day fixed for the hearing of the appeal will be sent by Sub Court, Chengalpattu, to which Court the appeal stood transferred and since no such notice was received, effective steps were not taken by the petitioner for the conduct of the appeal and, therefore, this would be a case of non-service of notice which would be sufficient cause for the non-appearance of the petitioner at the time when the appeal in A.S No. 188 of 1977 was disposed of. The further contention of the learned counsel for the petitioner is that the application to set aside the *ex parte* disposal of the appeal had been filed immediately after the petitioner became aware of the result of the appeal on 28th June, 1980 and, therefore, the delay has been satisfactorily explained.

5. On the other hand, the learned counsel for the respondent points out that even according to the petitioner, the fact of the transfer of the appeal from Sub Court, Kancheepuram, to the Sub Court, Chengalpattu, was within the knowledge of the petitioner even in 1977 and in spite of it, no steps were taken by the petitioner before the transferee court and, therefore, the petitioner cannot now turn round and say that for want of notice from Sub Court, Chengalpattu, it did not know about the pendency of the appeal before that Court and could not therefore, take necessary steps therein. It is the further submission of the learned counsel for the respondent that a perusal of the notes paper, particularly, the entry, dated 24th April 1978 would indicate that the petitioner had also entered appearance through counsel; as otherwise, the entry "Both Not Ready" would not have been made therein and this according to the learned counsel for the respondent, supports its case that the petitioner was represented by counsel or at any rate, counsel offered to appear though eventually he did not and therefore,

the petitioner was fully aware of the pendency of the appeal, but did not take any steps.

6. It is not now in dispute that notice of the appeal in A.S. No. 178 of 1973, Sub Court, Kancheepuram, was given to the petitioner and that a counsel of the name of Thiru C.M. Palanirajakumar was also engaged by the petitioner to defend the appeal. In paragraph 1 of the affidavit filed in support of the application I.A.No. 140 of 1980 in A.S. No.188 of 1977, the petitioner has clearly admitted that Thiru Palanirajakumar, the counsel engaged by the petitioner, had informed the petitioner in 1977 that the appeal had been transferred to Sub Court, Chengalpattu. From this it is obvious that the petitioner had knowledge of the transfer of the appeal A.S.No. 178 of 1973, Sub Court, Kancheepuram, to the Sub Court, Chengalpattu, and therefore, one would have normally expected the petitioner to have taken further steps with reference to the appeal so transferred before Sub Court, Chengalpattu. The omission, according to the petitioner, to take such steps was on account of an impression stated to have been entertained by the petitioner that another fresh summons or notice will be sent by Sub Court, Chengalpattu, to the petitioner and that since such a notice was not sent, the petitioner was unaware of the appeal and it had been disposed of on 4th August, 1978 without the knowledge of the petitioner as regards the hearing of the appeal, which later came to be known by the petitioner only on 28th June, 1980.

7. Under O.41, R. 14, C.P.C., provision is, made for service of notice on the respondent or on his pleader in the same manner provided for the service of summons on a defendant. O. 41, R. 14(2), C.P.C. enables the appellate Court to effect service in the appeal by itself. O, 41, R. 15, C.P.C. states that the notice to the respondent in the appeal should declare that if he does not appear on the day fixed, the appeal will be heard *ex parte*. O. 41, R. 17(1), C.P.C., provides for the dismissal of the appeal when the appellant fails to appear on the day fixed for the hearing. O. 41, R. 17(2), C.P C. declares that even when the appeal is disposed of in the absence of the respondent, but in the presence of the appellant, such hearing of the appeal and disposal is only *ex parte*. Under O.41, R.21 C.P. the disposal of an appeal is *ex parte* a judgment is pronounced against the re dent, an application may be made by respondent to rehear the appeal and Court is satisfied that notice was duly served or that the respondent prevented by sufficient cause from appe when the appeal was called on for he the Court shall rehear the appeal on terms as to costs or otherwise as it thinl

8. In the present case, the questic whether the petitioner has established notice of the appeal was not duly serve him. Normally, a party to a proce before any civil Court is entitled to a r from that Court where the proceeding pending in order to fix with the knowled the pendency of the proceedings and a enable him to take steps in that regard. on account of this that even in matters v are tried afresh as a result of remit c that the parties are given notice afre otherwise, the fact that the Court is seized of the matter may not be withir knowledge of the parties. Likewise, when an appeal is preferred, the respor to such an appeal is entitled to a notic this has been provided for under Or.41, I C.P.C.

9. It would be a very salutary practi even in cases of appeals transferred from Sub Court to another owing to exigencie of workload, a notice to that effect shou given to the parties informing them that appeal which was pending before one C has since been transferred to another C No provision to this effect either unde C.P.C. or under the Civil Rules of Pra and Circular Orders has been brought t notice of the Court by the counsel on el side. Since a party to a litigation before Court should know where it is pending when it is likely to be taken up, it is e tial-that parties must be informed by transferee Court in order to enable t to appear before the transferee C and contest the proceedings so transfe by engaging other counsel and taking n sary steps in that regard. In the absen any provision to that effect either under

C.P.C., or under he Civil Rules of Practice and Circular Orders, every effort should be made by Courts to put the litigants on notice of the transfer of pending litigation, be it the trial Court or the appellate Court as the case may be. It is very necessary and desirable—nay, even imperative till such time as provision in this regard is made either under the C.P.C. or under the Civil Rules of Practice and Circular Orders that there should be an inflexible adherence to this requirement regarding notice; as otherwise, Courts cannot adjudicate upon the rival claims of the litigants before it after giving an effective and adequate hearing to both sides, which is the bedrock of our system of administration of justice.

10. However, in the instant case, even according to the petitioner, notice had been received by the petitioner in A.S. No. 178 of 1973, Sub Court, Kancheepuram, and a counsel had also been engaged who had also discharged his duty by communicating the transfer of the appeal from Sub Court Kancheepuram, to Sub Court, Chengalpattu. It cannot, therefore, be said that the petitioner did not have any knowledge of the pendency of the appeal before Sub Court, Chengalpattu, and it had been misled on account of absence of a notice to that effect from Sub Court, Chengalpattu. The petitioner undoubtedly had knowledge of the transfer of the appeal from Sub Court, Kancheepuram, to Sub Court Chengalpattu, even in 1977 and even thereafter, the petitioner did not take any serious steps to defend the appeal. Under these circumstances, the explanation attempted by the petitioner that it was expecting a notice from Sub Court, Chengalpattu, and that since it did not receive any such notice, it was unaware of the pendency of the appeal before that Court cannot be accepted. No doubt, the disposal of the appeal, in the absence of the petitioner herein, would nevertheless be an *ex parte* disposal under Or.41, R.17(2), C.P.C. But even so, the petitioner has not satisfied the Court that notice was not duly served or that it was prevented by sufficient cause from appearing when the appeal was called on for hearing. In the present case, as has been already pointed out, the notice of the pendency of the appeal in A.S. No.178 of 1973, Sub Court, Kancheepuram, was duly served on the petitioner and the petitioner was aware also of the transfer of that appeal to Sub Court, Chengalpattu, and therefore, it cannot be said that the petitioner did not have the notice of the pendency of the appeal before Sub Court, Chengalpattu.

11. The other question that remains for consideration is, whether the petitioner was prevented by sufficient cause from appearing when the appeal was called. As regards this, the petitioner has not attempted to say anything other than what has been referred to already. No reason has been given as to why the petitioner who was aware of the pendency of the appeal before Sub Court, Chengalpattu, even in 1977 did not take any steps to defend the same. The non-receipt of the notice which has been stated as the only ground has already been adverted to and held to be not an acceptable ground to restore the appeal. It is also not established as to how the petitioner suddenly came to know of the result of the appeal only on 23rd June, 1980, when the petitioner was aware of the appeal before Sub Court, Chengalpattu, even in 1977 itself. It is obvious that the petitioner, though fully aware of the pendency of the appeal before Sub Court, Chengalpattu, did not take any steps whatever in that regard for some reason or other and has now come forward with this application on the ground that the petitioner was expecting a notice from Sub Court, Chengalpattu, and that it became aware of the result of the appeal only on 28th June, 1980. As pointed out earlier, the petitioner cannot take any shelter under the plea that it had been misled on account of the non-receipt of notice for the hearing of the appeal from the transferee Court. Under the circumstances of the present case, the delay in the filing of the application to rehear the appeal has not been satisfactorily explained at all. The Court below was, therefore, perfectly justified in dismissing the application filed by the petitioner and that order does not suffer from any illegality or irregularity. The Civil Revision Petition, therefore, fails and is dismissed. No costs.

VCS.