

C.M.P.No.13851 of 2016
in
C.R.P.No.2016 of 2012

T.MATHIVANAN.J.,

This petition is filed under Section 151 of the Code of Civil Procedure seeking permission to withdraw a sum of Rs.1,00,000/- with accrued interest from the deposit made by the respondent in O.S.No.5886 and 5887 of 2011.

2. It is manifested from the records that the petitioner herein had filed two suits in O.S.No.5886 of 2011 and O.S.No.5887 of 2011 on the file of the learned II Assistant Judge, City Civil Court, Chennai as against the respondents herein for recovery of money under Order XXXVII Rule 1 CPC. In the said suits, the respondents herein have filed two applications in I.A.No.20071 of 2011 and 20072 of 2011 under Order XXXVII Rule 3(5) CPC seeking leave to defend. Both the petitions were dismissed by the Court below against which two revision petitions were filed before this Court in C.R.P (NPD).Nos.2016 and 2017 of 2012. While disposing of these civil revision petitions, this Court had issued a direction to the respondent to deposit a sum of Rs.1,00,000/- in each suit for the purpose of showing their bonafide. This order was complied with and the respondents have already deposited Rs.1,00,000/- each in O.S.No.5886 of 2011 and O.S.No.5887 of 2011. Now, the said sum of Rs.2,00,000/- is lying in the City Civil Court deposit.

3.Mr.A.Gowthaman, learned counsel for the respondents in C.M.P.No.13851 of 2016, has submitted that insofar as the decree passed in O.S.No.5887 of 2011, the respondents have got no objection and insofar as the decree passed in O.S.No.5886 of 2011 is concerned, they have filed second appeal before this Court.

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4. Under this circumstance, the petitioner herein, being the decree holder has taken out this petition, seeking leave of the Court to withdraw the amount of Rs.1,00,000/- (each) which is deposited in O.S.No.5886 of 2011 and O.S.No.5887 of 2011 along with accrued interest.

This Court has taken into consideration of the submissions made by both the learned counsels and on perusal of the affidavit filed in support of the petition, this Court finds that the petitioner can be permitted to withdraw the amount deposited to the credit of O.S.No.5887 of 2011 along with accrued interest. Since the second appeal is pending in respect of the decree passed in O.S.No.5886 of 2011, the respondents are at liberty to put forth their contention at the time of advancing their arguments in the second appeal.

22.11.2016

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