

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

CORAM:

THE HON'BLE MR.JUSTICE **K.K. SASIDHARAN**

**CRP(PD). No. 2402 of 2016 and
CMP. No. 12408 of 2016**

Sitaram Goenka .. Petitioner

Vs

Sumathi Sriram .. Respondent

Prayer: This petition filed under Article 227 of the constitution of India praying to set aside the Judgment and Decree dated 23.06.2016 in I.A. No. 1724 of 2016 in I.A.No. 9798 of 2014 in OS.No.1791 of 2014, on the file of the learned XIV Assistant Judge, City Civil Court, Chennai and consequently allow the IA.No.1724 of 2016.

For Petitioner : Mr.Sirish Chowdhary

For Respondent : Mr.P.B.Balaji

ORDER

The petitioner filed a suit against the respondent in OS.No.1791 of 2014. In the said suit, the respondent filed an application under Order VI Rule 16 of the Code of Civil Procedure to

strike off the plaint. The petitioner entered appearance in the said application and contested the matter. The respondent marked Exhibits P.1 to P.3 in I.A. No. 9798 of 2014. It was marked without examining the parties. The petitioner therefore, filed an application in I.A.No.1724 of 2016 to reject those documents. The application was dismissed by the learned Trial Judge on the ground that the relevancy and admissibility of those documents will be decided subsequently. The said order is under challenge in this Civil Revision Petition.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.The respondent filed an application in I.A. No. 9798 of 2014 to strike off the plaint. The respondent produced three documents and marked those documents in I.A. No. 9798 of 2014 without examining the witness. Even without examining the witness, the documents were marked by the learned Trial Judge. I did not approve the procedure adopted by the learned Judge. There is no question of marking documents which were produced along with the

application without adopting the procedure of marking the document through the witness. This is not a case wherein the petitioner has given her consent for marking. The petitioner is perfectly correct in her contention that she was denied opportunity of objecting the marking of documents. This aspect was not considered by the learned Trial Judge.

4.The application was dismissed by the learned Trial Judge on the ground that the relevancy and admissibility of those documents will be decided subsequently. While making such an observation, the learned Trial Judge failed to consider the material fact that the documents were not marked through the witness. The matter, therefore, requires fresh consideration.

5.In the result, the impugned order dated 23.06.2016 in I.A.No.1724 of 2016 in I.A.No.9798 of 2014 in O.S.No.1791 of 2014 is set aside. The learned XIV Assistant Judge, City Civil Court, Chennai is directed to post the matter for recording evidence of the respondent herein, who is the petitioner in I.A.No.9798 of 2014 for the purpose

K.K. SASIDHARAN, J.

rts
of marking documents. Exs.P.1 to P.3 should be put to the petitioner in I.A.No.9798 of 2014 for the purpose of marking. It is needless to point out that due opportunity should be given to the petitioner herein to cross examine the witness with reference to Exs.P.1 to P.3. The learned Trial Judge is directed to consider the evidence so adduced through the witness on the side of the petitioner in I.A.No.9798 of 2014 and dispose of the suit as expeditiously as possible and in any case, on or before 31st March 2017.

6.The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

03.10.2016

jbm/rts

Index : Yes/No

To

The XIV Assistant Judge,
City Civil Court, Chennai.

**CRP(PD). No. 2402 of 2016
& CMP. No. 12408 of 2016**