

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD.No.4606 of 2010

and

M.P.No.1 of 2010

Mr.K.Srinivasa Varadhan

...

Petitioner

- Vs -

1. M/s.Sundaram Finance Distribution Ltd.,
Represented by its authorised signatory,
No.21, Patullos Road,
Chennai-600 002.

2. Mr.B.K.Kannan

...

Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 10.08.2010 and made in I.A.No.3417 of 2010 in O.S.No.7403 of 2001 on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner

: Mr.G.RM.Palaniappan

For 1st Respondent

: Mr.T.Srinivasa Raghavan

For 2nd Respondent

: No Appearance

ORDER

The fair and decreetal order dated 10.08.2010 and made in the application in I.A.No.3417 of 2010 in O.S.No.7403 of 2001 on the file of the XV Assistant City Civil Court are under challenge in this revision.

2. The revision petitioner herein is the 1st defendant in the suit whereas the 1st respondent is the plaintiff and the 2nd respondent is the 2nd defendant in the suit.

3. The defendants 1 and 2 are the son and father. The 1st respondent/plaintiff herein had filed the above said suit as against them and thereby sought the relief of recovery of money to the extent of Rs.20,02,788/- together with interest at the rate of 24% per annum from the date of plaint till the date of payment. This suit was contested by the revision petitioner/2nd respondent by filing their respective written statement. After formulating necessary issues, the process of recording of evidence on the side of the plaintiff was commenced and completed. Only at the stage of marking of documents while recording evidence on behalf of the defendants, the 2nd defendant had filed his proof affidavit, to be examined him as DW1.

4. Under these circumstances, the revision petitioner herein who is the 1st defendant had taken out an application in I.A.No.3417 of 2010, under Section 151 of C.P.C., to eschew the proof affidavit filed by the 2nd defendant on his behalf (on behalf of the revision petitioner/D1 in the above said suit). This petition was contested by the 1st respondent/plaintiff by filing his counter statement and after hearing both sides, the learned Trial Judge had proceeded

to dismiss the application on the ground that it is well settled law that an act done by an authorized agent on behalf of his principal is presumed to be done by the principal himself and the principal is estopped from getting back from his words. The learned Trial Judge had also found that it is also relevant to note that the 2nd defendant had actually filed the application in I.A.No.15294 of 2009 with a prayer to file additional proof affidavit on 28.08.2009 and the same was dismissed by this Court on 11.11.2009 with a finding that the defence of the petitioner/1st defendant and the 2nd defendant were different. Hence, it is quite clear that the present application is an attempt to get the very same relief which was dismissed in the application in I.A.No.15294 of 2009 on 11.11.2009.

5. Having been aggrieved by the impugned order dated 10.08.2010, present revision is filed by the revision petitioner, who is the 1st defendant in the suit.

6. It has to be noted that, in his affidavit, the revision petitioner at paragraph No.2 has stated that since he was residing in abroad, he is not in a position to depose before Court. The 2nd respondent/defendant who is none other than his father was authorised to depose evidence on his behalf and as such the 2nd respondent / 2nd defendant had also filed his proof affidavit on his

behalf (D1). In the third paragraph he had stated that since he had come to India and permanently residing here, he is ready and willing to depose evidence in the above suit. Therefore, the proof affidavit filed by the 2nd defendant who is none other than his father shall have to be eschewed as he (1st defendant) is willing to file further proof affidavit on his behalf. It has to be noted that already the plaintiff's side evidence was completed. The 2nd defendant had filed his proof affidavit. It is also to be noted that earlier an application in I.A.No.15294 of 2009 with the prayer to file additional proof affidavit on 28.08.2009 was filed and the same was dismissed by this Court on 11.11.2009 rejecting the request made by the 2nd defendant on the ground that the defence taken by the revision petitioner / 2nd defendant are different in nature. While dismissing the application, the trial court had rightly found that the act done by an authorized agent on behalf of his principal is presumed to be done by the principal himself and there the principal is estopped from getting back from his words.

7. On perusal of the impugned order, this Court also finds that the application in I.A.No.3417 of 2010 is an attempt to get the very same relief which was rejected by the dismissal of the petition in I.A.No.15294/2009 on 11.11.2009.

8. In view of the above said fact, this civil revision petition is dismissed and the impugned order is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

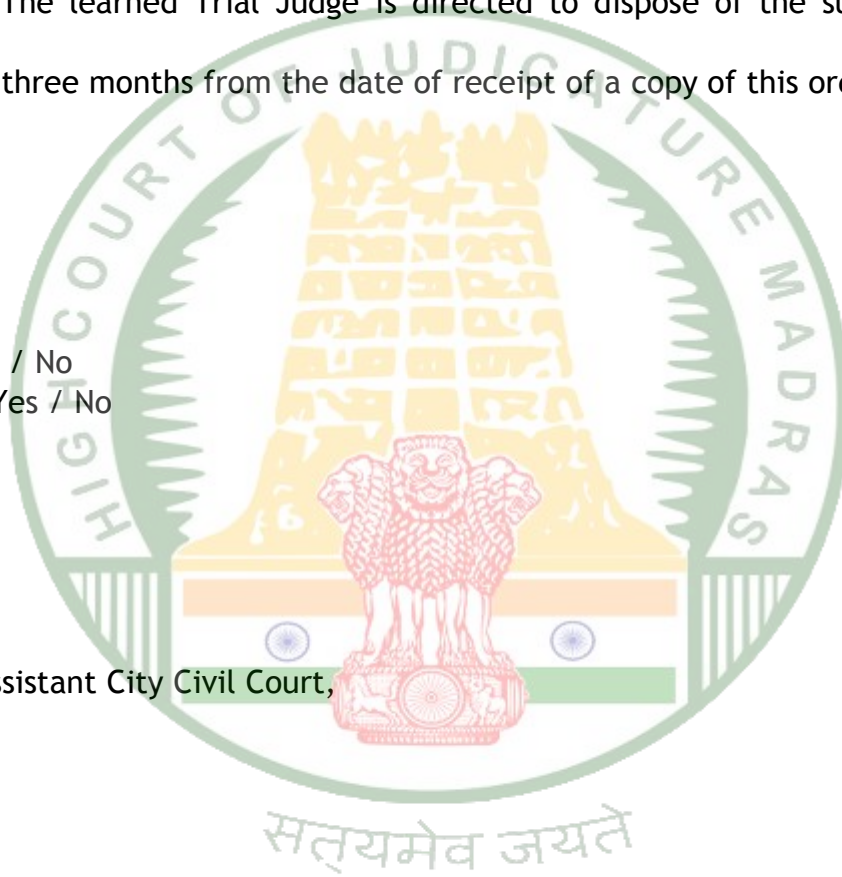
9. The learned Trial Judge is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

03.11.2016

Index:Yes / No
Internet:Yes / No
ssn

To

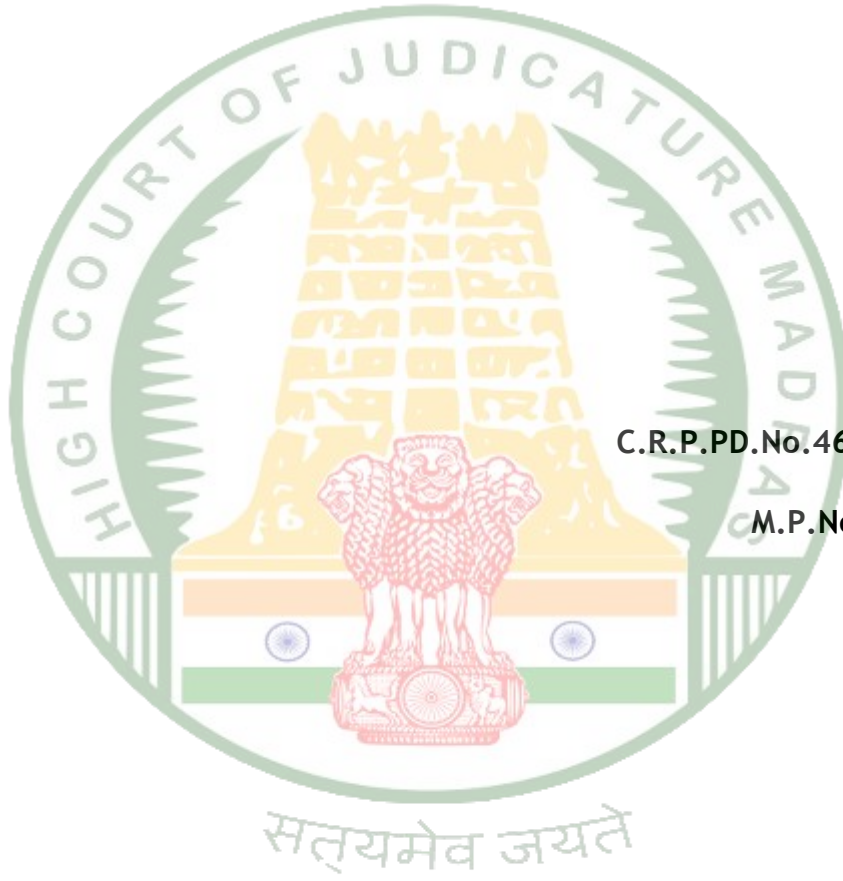
The XV Assistant City Civil Court,
Chennai.



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T.MATHIVANAN, J.,

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