

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM

THE HON'BLE T. MATHIVANAN

CIVIL REVISION PETITION (PD) No.3662 of 2013

&

M.P.No.1 of 2013

S.Jayaraj : Petitioner

Vs.

S.Loganathan : Respondent

Prayer : Civil revision petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.03.2013 and made in the application in I.A.No.8454 of 2012 in the suit in O.S.No.8470 of 2010 on the file of the learned V Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Selvakumar

For Respondent : Mr.R.Rajesh Kumar

ORDER

This memorandum of Civil Revision Petition has been directed against the fair and decretal order dated 07.03.2013 and made in the application in I.A.No.8454 of 2012 in the suit in O.S.No.8470 of 2010 on the file of the learned V Additional Judge, City Civil Court, Chennai.

2.The Revision Petitioner herein is the plaintiff in the suit in O.S.No.8470 of 2010 whereas the respondent herein is the defendant.

3.The Revision Petitioner had filed the above suit as

against the respondent herein and thereby sought the relief of permanent injunction restraining the respondent and his men from publishing any materials, write ups notice, print outs etc., referring to the plaintiff either by his name, or by his religious professing, or by his educational attainments etc., and to pay him a sum of Rs.10,00,000/- towards compensation. This suit was contested by the Respondent/Defendant.

4.After formulating necessary issues, the trial was commenced. Under this circumstance, the revision petitioner/plaintiff had taken out an application in I.A.No.8454 of 2012 under Order XVI Rule 1 of CPC to issue summons to the witnesses enumerated in the petition for examining them as witnesses to depose about the write ups put up by the defendant in the notice board of the "SEWA BSNL" at Central Telegraph Office, Chennai during the period between July 2009 and March 2010. This petition was also contested by the Respondent/defendant.

5.After hearing both sides, the learned trial Judge viz., learned V Additional Judge, City Civil Court, Chennai had dismissed the said application on the ground that the provisions of Rule 1 to Order XVI of C.P.C is not applicable to the Central Government Employees as there is a specific provision under Order XVI Rule 4(B) of the Code of Civil Procedure. The learned trial Judge has also observed that

Rule 4(B) of Order XVI is very clear that the petitioner should deposit suitable amount towards travelling and other expenditure of the witnesses.

6. Being aggrieved by the impugned order, the Revision Petitioner/plaintiff stands before this Court with this revision.

7. In so far as Rule 4 to Order XVI of the Code of Civil Procedure is concerned, certain High Courts viz., Assam, Calcutta, Delhi, Guwahati, Himachal Pradesh, Madhya Pradesh, Punjab, Andhra Pradesh, Karnataka, Kerala and Madras have brought their respective amendments on this line. The Madras High Court has, by way of this amendment, inserted the Rules 4-A and 4-B after Rule 4.

8. Rule 4-A contemplates special provision for public servants summoned as witnesses in suits to which the Government is a party.

Rule 4-B is the special provision for public servants summoned as witnesses in suits in which the Government is not a party.

Sub-Rule 1 and Sub-Rule 2 to Rule 4B of Order 16 are extracted hereunder:

"1. Notwithstanding anything contained in the foregoing rules in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a Railway Employee is summoned to give evidence and/or to produce documents in his official capacity, the Court shall direct the party applying for summons

to deposit such sum of money as will, in the opinion of Court, be sufficient to defray the travelling and other expenses of the officer concerned as for a journey on tour, and on deposit of such sum the Court shall direct the summons to be issued and, out of sum so deposited or out of any further sum which the Court may subsequently direct the party applying for the summons to deposit, the Court shall on the appearance before the Court of the Officer summoned or as soon thereafter as is practicable, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.

2. The officer appearing before Court in accordance with sub-rule 1 shall produce a certificate duly signed by the Head of his Office, showing the rates of travelling and other allowances admissible to him as for a journey on tour and the amount payable to him by the Court shall be computed on the basis of rates specified in such certificate P Dis No.851/52 dated 28.11.1952."

9. Obviously Government is not a party to the suit. Therefore, as rightly argued by Mr.R.Selvakumar, learned counsel for the petitioner Rule 4-B would be more suitable and applicable. Insofar as the application in I.A.No.8454 of 2012 in the suit is concerned the petitioner has sought the relief of issuance of summons to the witnesses or names which are enumerated under the petition to depose about the

(defendant) in the notice board of the 'SEWA BSNL' as the Central Telegraphic Office during the period of July 2009 to March 2010.

10. This Court has perused the impugned order and finds that the learned trial Judge has miserably failed to appreciate the purpose for which the petition is filed. What he has observed is, that on careful perusal of Order XVI Rule 1 it is apparently clear that the provision is not applicable to Central Government employees since specific provisions under Order XVI Rule 4 is available. Equally, Order XVI Rule 4 is very clear that the petitioner should deposit suitable amount towards travelling and other expenditure of the witnesses. In this petition, the petitioner has not whispered anything about the deposit of amount towards travelling and other expenses.

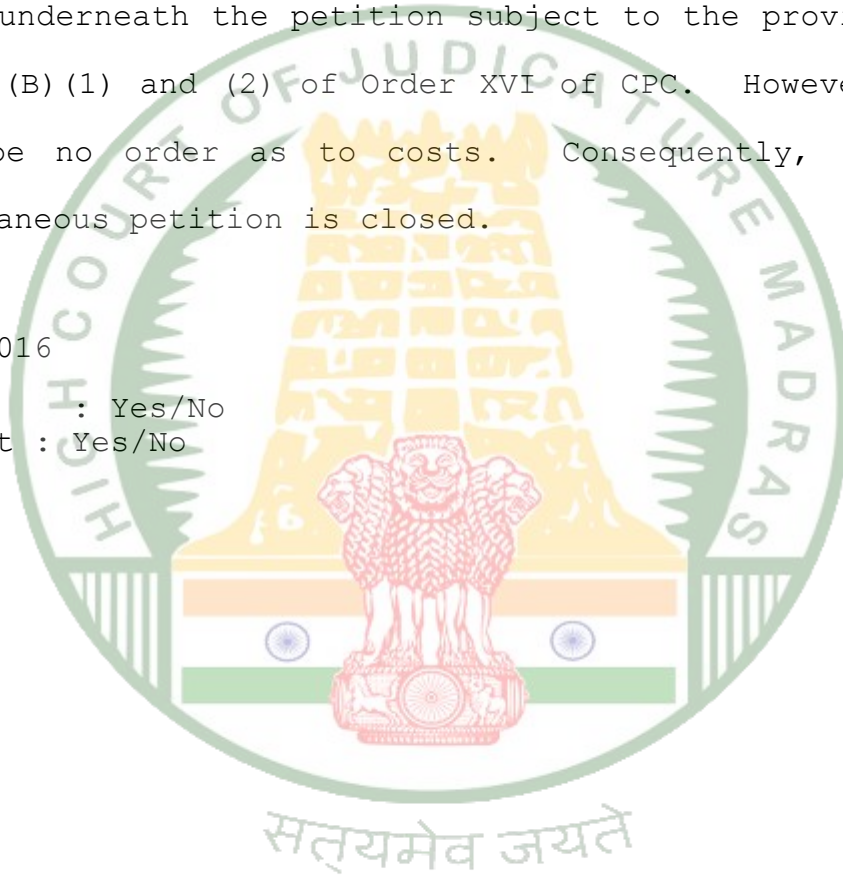
11. It is pertinent to note here that the statutory mandate cannot be violated or infringed. Equally it is also to be noted that quoting wrong provision of law, would not take away the rights and remedy which are available to the petitioner. Here, the petitioner has wrongly quoted Order XVI Rule 1 in his petition for summoning the witnesses. But, as observed by the learned trial Judge, correct provision would be Order XVI Rule 4 (B). Therefore, the impugned order is liable to be set aside only for the simple reason that on quoting of wrong provision of law will not in any nullify the rights available to the petitioner.

12. Accordingly, this Civil Revision Petition is allowed and the impugned order is set aside. The application in I.A.No.8454 of 2012 is also allowed and the learned Judge is directed to issue summons to the witnesses listed underneath the petition subject to the provisions of Rule 4 (B) (1) and (2) of Order XVI of CPC. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.11.2016

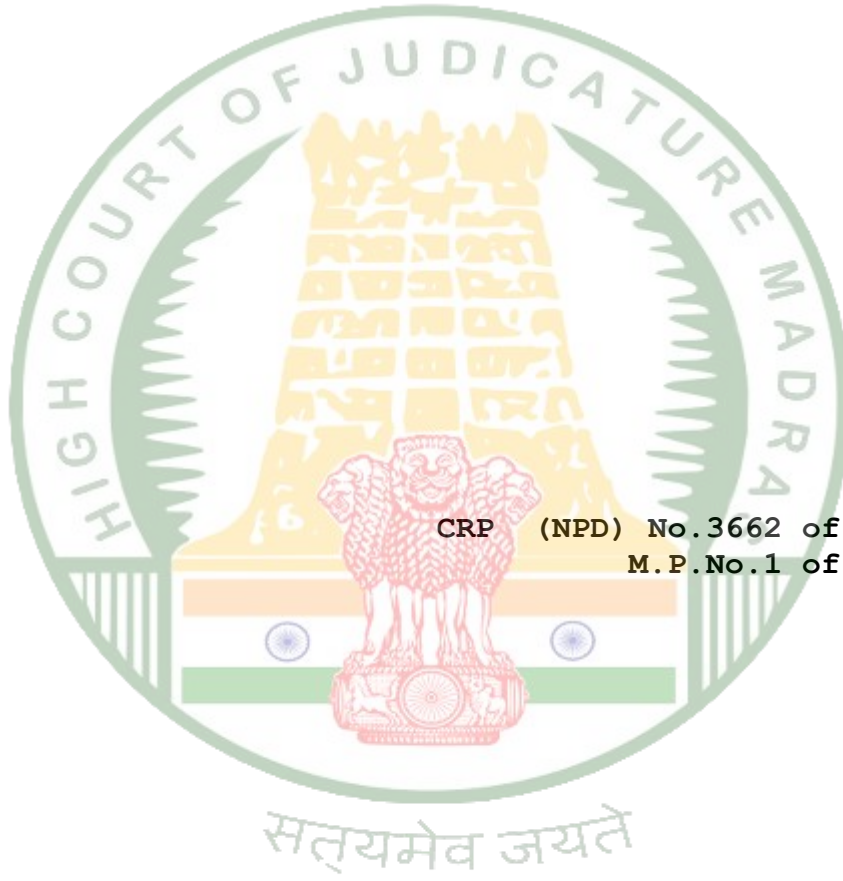
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T.MATHIVANAN, J



**CRP (NPD) No.3662 of 2013 &
M.P.No.1 of 2013**

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22.11.2016