

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.2009 of 2017

and

C.M.P.No.9724 of 2017

V.K.KarthikeyanPetitioner

Vs.

1. Meenakumari

2. Minor. Kavish Akash
(Represented by his guardian and
next friend his mother Meenakumari)Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.11.2016 passed in I.A.No.620 of 2016 in O.S.No.264 of 2016 on the file of the I Additional Sub Court, Erode District.

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For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.P. Jegadeesan

ORDER

The present Civil Revision Petition is filed to set aside the fair and final order dated 18.11.2016 passed in I.A.No.620 of 2016 in O.S.No.264 of 2016 on the file of the I Additional Sub Court, Erode District.

2. The petitioner has filed the suit for recovery of money of Rs.6,38,166/-. The petitioner also filed an interlocutory application in I.A.No. 620 of 2016 to furnish security for the aforesaid suit amount against the defendants. The trial court has dismissed the said application erroneously on the ground that there is no sufficient materials available to order attachment. Therefore, the petitioner has preferred the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioner would submit that the court below without following the provisions under Order 38 Rule (v) of C.P.C. by accepting the denial of the execution of the pronote/promisoory note, merely dismissed the application filed by the plaintiff/revision petitioner which is liable to be set aside.

4. The learned counsel for the respondent would submit that the reason as stated in the affidavit filed in support of the interlocutory application is not in consonance with the grounds raised in the present

Civil Revision Petition. However, there is no illegality in the order passed by the court below and hence, need not be set aside.

5. Considering the facts and circumstances of the case, a perusal of the order it is clear that the trial court has not passed orders in accordance with the provisions under Order 38 Rule (v) of C.P.C. and therefore, I am inclined to set aside the order passed by the Trial Court. Hence, the order made in I.A.No. 620 of 2016 is set aside and accordingly the Civil Revision Petition is allowed. The trial Court is directed to dispose of the I.A.No. 620 of 2016 as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order.

6. Accordingly, the Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

30.10.2017

Speaking/Non-speaking order

Index : Yes/No

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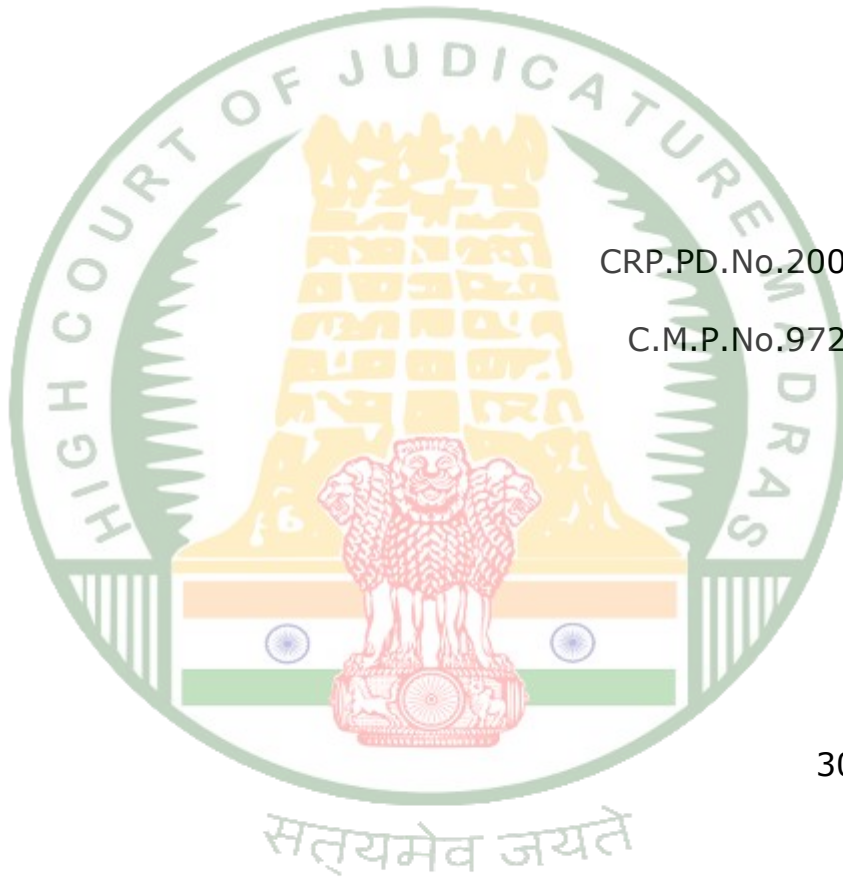
Note: Issue order copy on 08.11.2017

To

<http://www.judis.nic.in> The I Additional Sub Judge ,
Erode District.

D.KRISHNAKUMAR. J,

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