

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM

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

CRP.(PD).No.2735 of 2017

and

CMP.No.12976 of 2017

Jagadishwaran

..Petitioner

Vs.

P.Poongudi

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.02.2017 made in IA.No.700 of 2015 in OS.No.124 of 2011 on the file of the Sub Court, Udumalpet.

For petitioner : M/s.R.Gouri

For respondent : Mr.V.S.Viswanathan

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According to the revision petitioner, the respondent has filed a suit in OS.No.124 of 2011 on the file of the Subordinate Judge, Udumalpet. In the aforesaid suit, the revision petitioner has filed an

application under Order 7 Rule 11 of the Civil Procedure Code to reject or return the plaint stating that the plaintiff / respondent has not paid the court fee as per Section 37 (1) of the Tamil Nadu Court Fees Act, 1955. The court below, without considering the contention of the revision petitioner, has rejected the same for the reason that the application filed by the revision petitioner is not maintainable, after the trial is commenced. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the respondent would submit that this Court may pass appropriate order to direct the court below to frame additional issues as raised in the instant application filed under Order 7 Rule 10 of the Civil Procedure Code.

3. By consent of both the parties, this Court is inclined to pass the following orders.

- (a) The impugned order passed by the court below is set aside
- (b) The court below is directed to frame additional issue whether the court fee paid by the respondent / plaintiff is sufficient under the provisions of Section 37 (1) of the Tamil Nadu Court Fees and Violation Act, 1955 and proceed with the trial in accordance with law after

providing opportunity to the parties.

4. On instructions, both the parties undertake to cooperate with the disposal of the suit. Therefore, the trial court is directed to dispose of the suit in OS.No.124 of 2011 within the period of twelve weeks from the date of receipt of a copy of this Order.

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

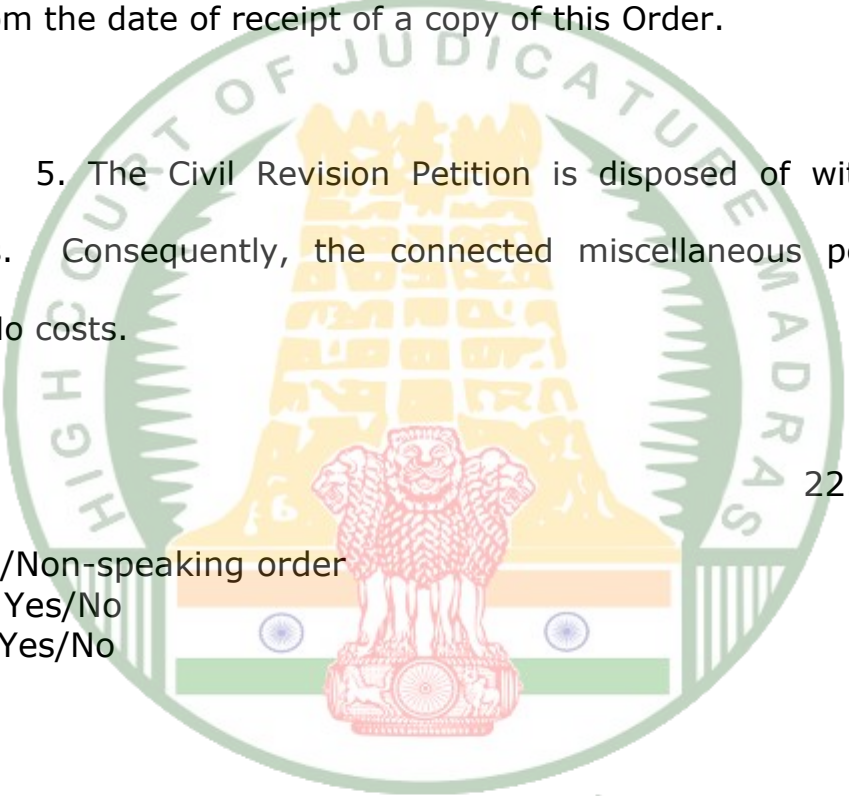
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Speaking/Non-speaking order

Index :Yes/No

Internet:Yes/No

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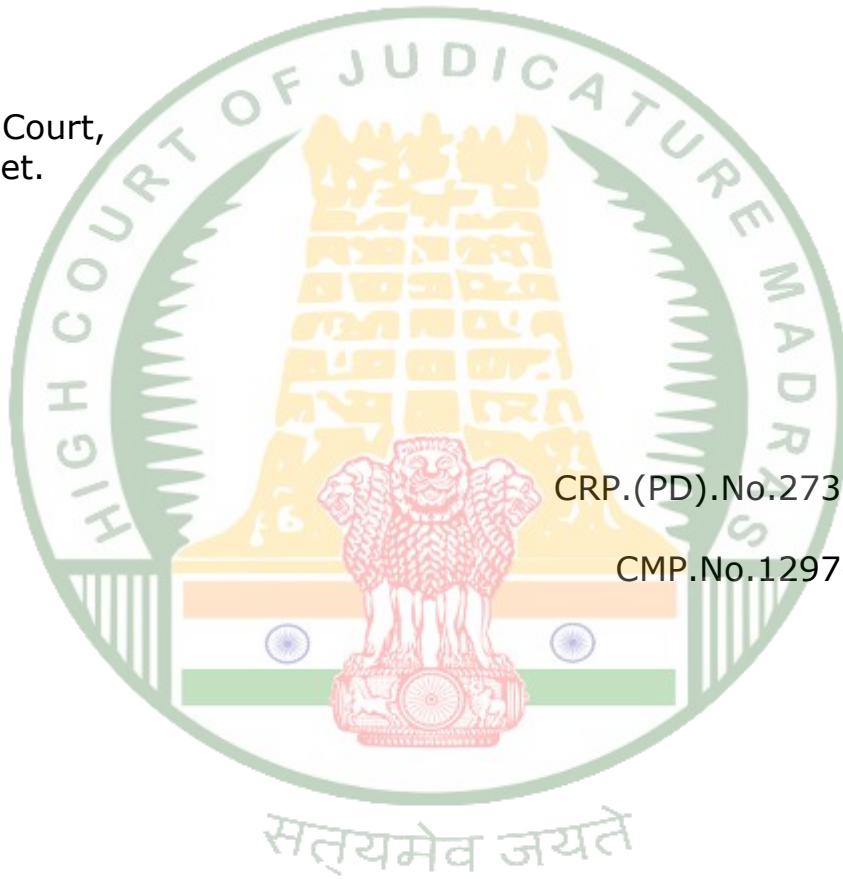
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D.KRISHNAKUMAR.J,

lok

To
The Sub Court,
Udumalpet.



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22.12.2017

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and
C.M.P.No. 12976 of 2017

D.KRISHNAKUMAR,J

At the instance of the learned counsel for the petitioner, the matter is posted today under the caption "being mentioned".

2. As requested by the learned counsel for the petitioner, the order dated 22.12.2017, passed by this Court in this Civil Revision Petition is modified as follows :

Paragraph 3 (a) & (b) to be deleted and paragraph 3 to be read as follows :

3. By consent of both the parties, this Court is inclined to direct the court below, to frame additional issue whether the court fee paid by the respondent / plaintiff is sufficient under the provisions of Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and proceed with the trial, in accordance with law after providing opportunity to the parties.

D. KRISHNAKUMAR J.

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3. It is made clear that the rest of the order, remains unchanged.
Registry is directed to prepare a fresh order incorporating the necessary corrections.

06.02.2018

Note :

1. Issue fresh order copy to the counsel for petitioner and respondent.
2. Mark a copy of the fresh order to the Sub-Court, Udumalpet.

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and
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