

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.2835 of 2017

and

C.M.P.No.13403 of 2017

Sethubalasubramaniam

.. Petitioner

Vs.

K.Kishore Kumar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.08.2017 made in I.A.No.39 of 2017 in O.S.No.24 of 2016 on the file of the learned District Munsif Court, Kangeyam.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.K.V.Sajeev Kumar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order dated 04.08.2017 made in I.A.No.39 of 2017 in O.S.No.24 of 2016 on the file of the learned District Munsif Court, Kangeyam.

2. The learned counsel for the petitioner submitted that the application I.A.No.39 of 2017 filed to set aside the exparte decree passed by the court below was allowed on imposing a condition that the petitioner/defendant should file an Undertaking affidavit, to the effect that he shall not put up any further constructions in the suit property, failing which, the order will stand automatically vacated. Challenging the aforesaid order, this revision has been filed before this Court.

3. The learned counsel for the petitioner would submit that the instant application has been filed by the revision petitioner to set aside the exparte decree. Although the said application was allowed by the trial court, the petitioner is aggrieved with the condition imposed by the trial court, directing the petitioner to file an Undertaking affidavit stating that he shall not put up any further constructions in the suit property and he shall maintain status quo, of the suit property, for a period of one month. According to the petitioner, the said order passed by the court below is unsustainable in law, and so the same is liable to be set aside.

4. The learned counsel for the respondent has submitted that subsequent to the exparte decree, dated 29.11.2016, an execution petition has been filed by the respondent. Therefore, the order has been passed by the

court below, directing the petitioner not to proceed with the construction in the aforesaid suit property. The said order was passed only in the interest of justice. Therefore, the order passed by the court below is correct. Hence, the civil revision petition is liable to be dismissed.

5. Considered the submission made by the learned counsel for the parties and perused the materials on record.

6. The impugned order directing the revision petitioner to file an Undertaking affidavit was passed on 04.08.2017, by which the said affidavit to be filed within one month's time, the revision petitioner has not filed any affidavit before the trial court in view of the interim stay granted by this Court in the present revision.

7. In view of the fact that time granted by the court below has expired, there is no further adjudication required in the present revision petition. At this stage, the learned counsel for the respondent seeks time to file an application before the court below for interim relief.

8. In the light of the above said facts and submissions made by the counsel for the petitioner and in view of the interim order granted by this

Court and since the conditional final order (in clause 1 and 2 in paragraph 8) passed by the court below has not been implemented, the period has also been expired now, at this stage, it is not necessary to consider the same on merits. Hence, this Civil Revision Petition is dismissed. However, liberty is granted to the respondent to file an application within a period of two weeks from the date of receipt of a copy of this order, till then status quo as on today is granted. If any application is filed, the same shall be considered by the trial court without being influenced by any of the observation made in the present interlocutory application. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking Order/Non-Speaking Order
ssn

14.11.2017

Note: Issue order copy on 10.01.2018

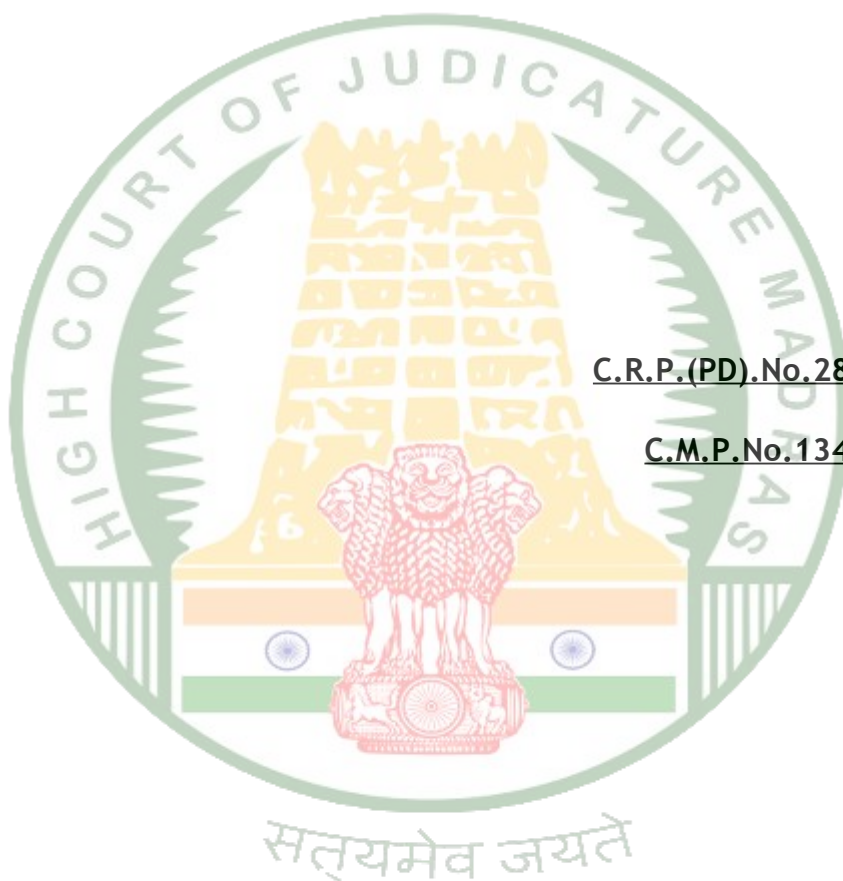
To

The District Munsif Court,
Kangeyam.

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D. KRISHNAKUMAR, J.,

ssn



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