

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 28.08.2017****CORAM****THE HONOURABLE MR.JUSTICE M.GOVINDARAJ****CRP.(PD)No.3049 of 2017**
and CMP No.14315 of 2017

S.Rakesh Kumar

... Petitioner

vs.

M/s.Deekay Electrical's
No. 38 Rattan Bazaar Road,
Park Town,
Chennai-600 003.
rep. by its Manager
Mr.P.Gunasekaran

... Respondent

PRAYER: Civil Revision Petition filed under Article 226 of the Constitution of India, against the order dated 01.03.2017 passed in I.A.No. 148 of 2016 in O.S.No. 3611 of 2016 by the Learned XVIIIth Additional Judge, City Civil Court, Chennai dismissing the petition filed for leave to defend the above suit in O.S.No. 3611 of 2016.

For Petitioner : Mr.G.Ramachandran
For Respondent : Mr.Biman

WEB COPY**ORDER**

This Civil Revision Petition is directed against rejection of the petition seeking leave to defend the summary suit. The case of

the petitioner is that he is not the proprietor of the defendant firm and the suit is barred by limitation, whereas respondent/plaintiff would state that the defendant, by its reply notice dated 16.03.2016, has acknowledged deed and therefore, the suit is not barred by limitation.

2. The Trial Court, on a perusal of the Exhibits marked before it, has found that on keen perusal of the signature marked as Ex.R8 matched with the defendants signature contained in the vakalat and the affidavit of the petitioner. Hence, the trial Court has held that the claim is admitted by the petitioner/defendant and therefore dismissed the petition to leave to defend the suit. The Trial Court should not have compared the signature found in Ex.R8 and the signature found in Vakalat without allowing Ex.R8 as evidence in relation to the proof of the facts. Instead, the Trial Court has come to the conclusion that the signatures being similar amounts to admission of the claim by the petitioner. Such approach of the Trial Court is erroneous and therefore, the disposal of the petition is incorrect.

3. When issue is raised by the defendant with regard to limitation as well as the maintainability of the claim, it should be found that there are triable issues. The Trial Court failed to grant

leave to defend the suit, and therefore the order passed by the Trial Court is set aside and leave is granted to defend the suit. The Trial Court is directed to dispose of the suit as expeditiously as possible.

4. With above direction, this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.



28.08.2017

Speaking/Non-speaking order
Index:Yes/No
bsm

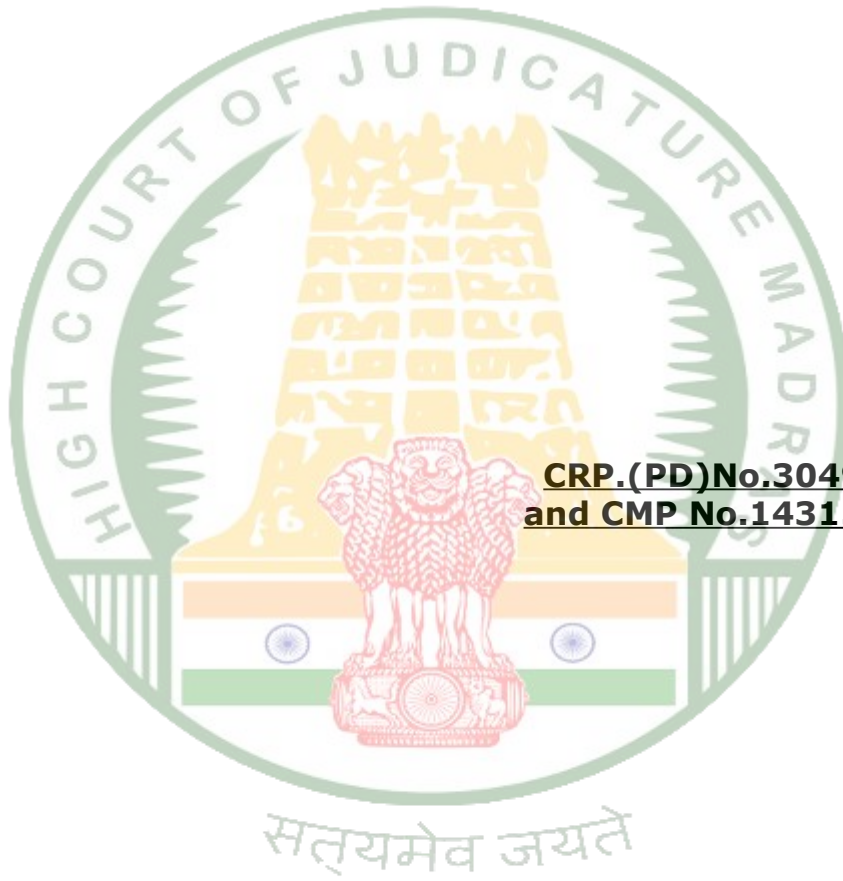
To

XV Small Causes Court, सत्यमेव जयते
Chennai.

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M.GOVINDARAJ.,J.

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