

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

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

CRP.(PD).Nos.3168 and 3217 of 2017
and CMP.Nos.14837 and 15091 of 2017

M/s. Indus Towers Limited,
Rep.by its Authorised Signatory,
No.5, ESSPEE, Jawaharlal Nehru Road,
Ekkatuthangal, Chennai - 600 032

..Petitioner
in both CRP's

Vs.

B.Muniyandi

..Respondent in
C.R.P.No.3168 of 2017

B.Velu

..Respondent in
C.R.P.No.3217 of 2017

PRAYER IN C.R.P.No.3168 of 2017:

The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 22.03.2017 passed by the Hon'ble District Munsif Court at Tambaram in I.A.No.692 of 2016 in O.S.No.377 of 2015 and to set aside the same.

PRAYER IN C.R.P.No.3217 of 2017:

The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 22.03.2017 passed by the Hon'ble District Munsif Court at Tambaram in I.A.No.631 of 2016 in O.S.No.396 of 2015 and to set aside the same.

For petitioner : Mr.S.Anil Sandeep
(in both CRP's.)

COMMON ORDER

The respondents have filed suits in OS.Nos.377 and 396 of 2015 before the District Munsif Court, Tambaram for permanent injunction. After receipt of notice, the revision petitioner has filed applications in IA.Nos.692 of 2016 and 631 of 2016 under Order 7 Rule 11 to reject the plaints. Counter statement has been filed by the respondents, by objecting the instant applications filed by the revision petitioner. After considering the same, the trial court has dismissed the said applications. Hence, the revision petitioner has filed the Civil Revision Petitions before this Court.

2. The learned counsel for the revision petitioner would submit that the petitioner herein has obtained permission from the department concerned to install the cell phone towers. The

respondents are not the owners of the suit properties. But residing at the adjacent properties. Therefore, the respondents cannot claim the relief of permanent injunction against the revision petitioner. Further it is submitted that the suits filed by the respondents is against the provisions of Sections 37 and 38 of the Specific Relief Act, 1963. But, the trial court has erroneously dismissed the applications. Therefore, the orders passed by the court below are liable to be set aside.

3. It is the case of the petitioner that the Executive Officer, Peerkankaranai Town Panchayat who is the competent authority under Tamil Nadu District Municipalities Act has granted approval for installation of the mobile phone towers on the roof of the buildings. The Government Order in GO.Ms.No.177 dated 17.12.2002 issued by the Municipal Administration and Water Supply Department provides specific permission for the installation of towers on private lands and buildings. Further, the respondents have no personal interest in the matter. Firstly, considering the provisions under Order 7 Rule 11 of the Civil Procedure Code which is extracted as follows:

"Rejection of plaint – The plaint shall

be rejected in the following cases:-

a) where it does not disclose a cause of action.

b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

d) where the suit appears from the statement in the plaint to be barred by any law. (Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case

may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff)."

There is no sufficient grounds to invoke provisions under Order 7 Rule 11 of the Civil Procedure Code for allowing the applications. Secondly, the petitioner has obtained necessary certificates for installation of towers in the suit property. The aforesaid fact is a triable issue and the same can be decided on merits in the suit. Therefore, the mixed question of fact can be decided at the time of trial by adducing oral and documentary evidence. Hence, at this stage, the order of the Court below is perfectly in accordance with law.

4. At this stage, the revision petitioner undertakes to file written statements in the above suits, before the trial court within four weeks from today and requests this Court to direct the trial court to dispose of the said suits as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this Order.

5. By considering the above request made by the

learned counsel for the revision petitioner, in the event of written statement is filed within the period, the trial court is directed to dispose of the suits in OS.Nos.377 and 396 of 2015 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this Order.

6. In view of the above, the Civil Revision Petitions are dismissed with above direction. Accordingly, the connected miscellaneous petitions are closed. No costs.

22.11.2017

Speaking/Non-speaking order

Index :Yes/No

Internet:Yes/No

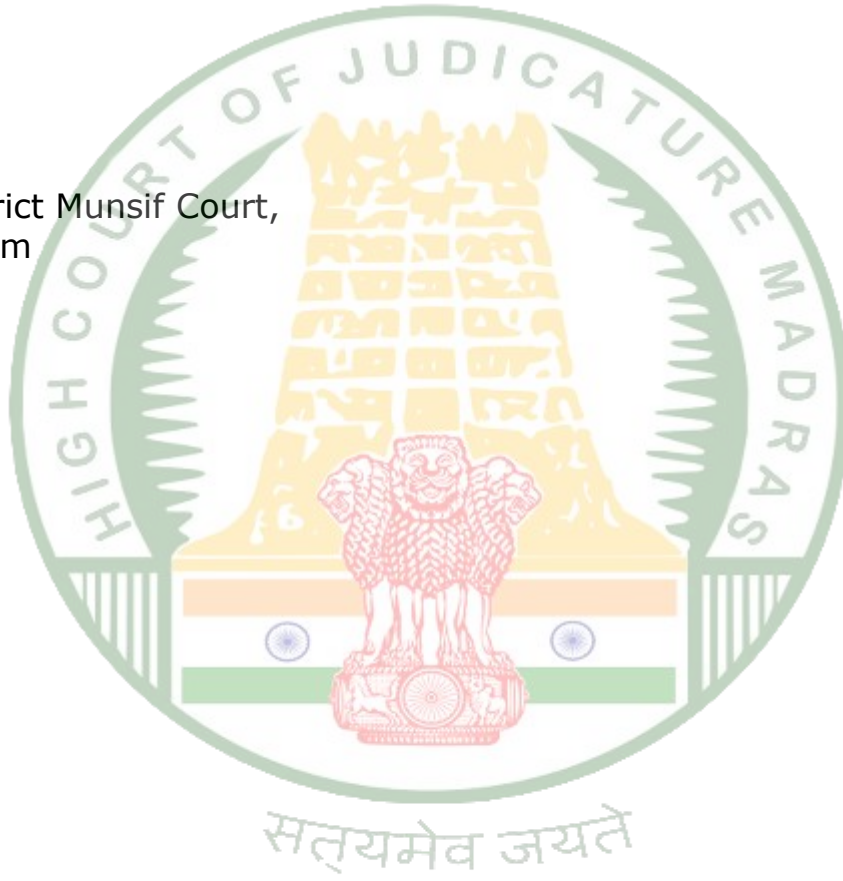
lok

Note: Issue order copy on 27.11.2017

सत्यमेव जयते

WEB COPY

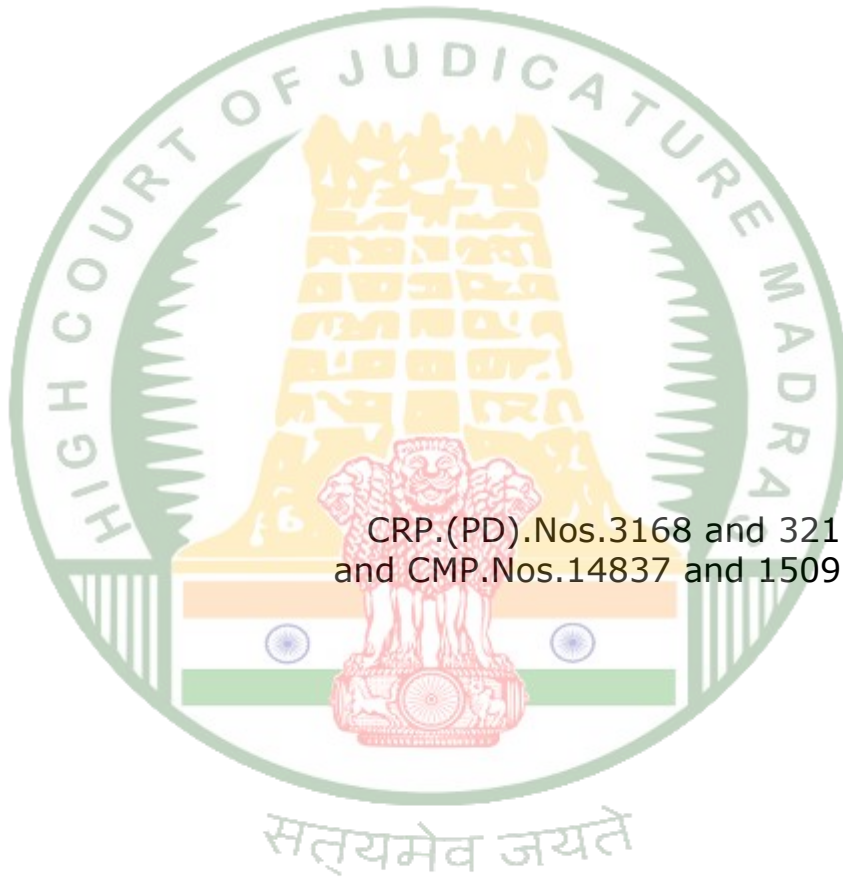
To
The District Munsif Court,
Tambaram



WEB COPY

D.KRISHNAKUMAR. J,

lok



CRP.(PD).Nos.3168 and 3217 of 2017
and CMP.Nos.14837 and 15091 of 2017

WEB COPY

22.11.2017