

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.3703 of 2017

and

C.M.P.No.17202 of 2017

R.Prabu

... Petitioner/plaintiff

Vs.

1. Santhanalakshmi

2. N.P. Srinivasan

3. D.Dhandapani

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Order dated 21.07.2017 made in Memo in A.S.No.31 of 2015 on the file of the District Judge at Vellore.

For Petitioner : Mr.P.Chandrasekar

सत्यमेव जयते

ORDER

According to the petitioner, the first respondent/defendant filed an appeal suit in A.S.No.31 of 2015 challenging the Judgment and Decree dated 07.08.2014 passed by the Subordinate Court, Vellore in O.S.No.114 of 2005. After the appeal suit was numbered, the

petitioner / plaintiff filed a memo stating that since the respondent has not paid the deficit court fee of Rs.18,450/- as directed by the court, the Appeal suit is not maintainable. On perusal of record, the court below has recorded a finding that the appellant has paid the balance court fee and directed to carry out the amendment. Challenging the docket order dated 21.07.2017, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the respondent herein has not complied with Section 149 of the Civil Procedure Code for the payment of deficit court fee. Hence, a memo was filed by the revision petitioner stating that the appeal suit is not maintainable for want of deficit court fee. Without considering the memo filed by the petitioner, the Appellate court has proceeded with the appeal suit.

3. On perusal of the memo, the petitioner has raised the ground that the appeal suit is not maintainable on the ground that the respondent has not complied with the procedure as contemplated under Section 149 of the Code of Civil Procedure. Therefore, challenging the docket order dated 21.07.2017, the petitioner has filed

the present Civil Revision Petition before this Court.

4. By considering the facts, maintainability of the suit can be decided at the time of final hearing of the appeal suit. Hence, prima facie case is not made out to entertain the Civil Revision Petition.

5. The Civil Revision Petition is dismissed with liberty to the petitioner to raise the above ground during arguments before the Appellate court. Consequently, the connected miscellaneous petition is closed. No costs.

05.10.2017

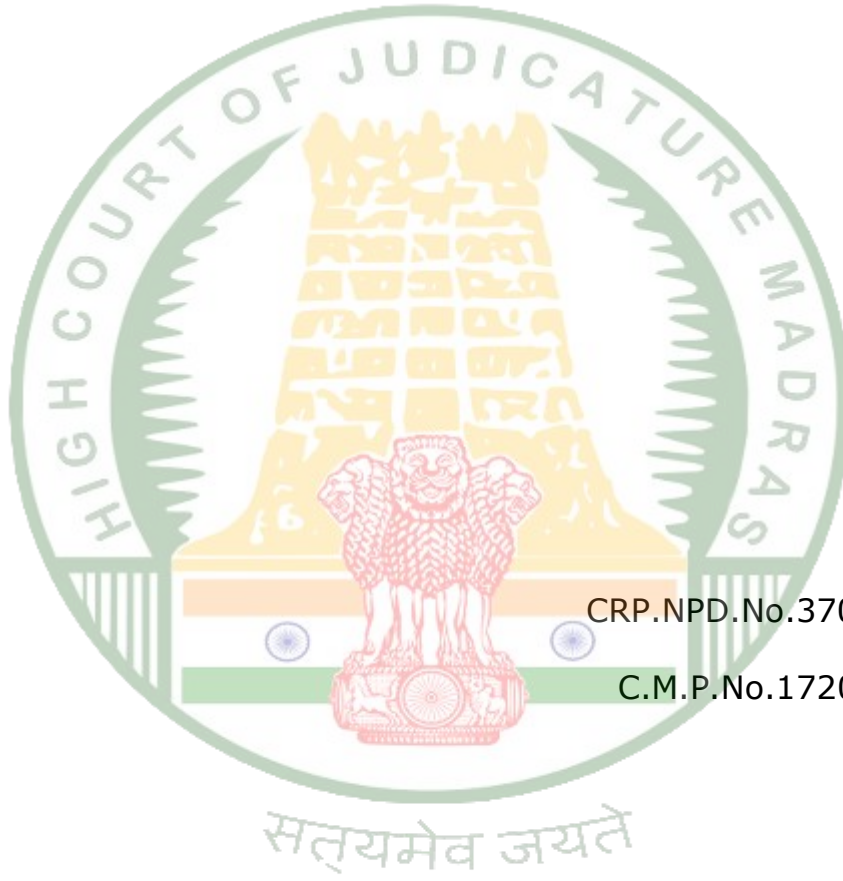
Speaking/Non-speaking order
Index : Yes/No
Internet: Yes/No
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To
The District Judge,
The District Court,
Vellore.

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D. KRISHNAKUMAR J.

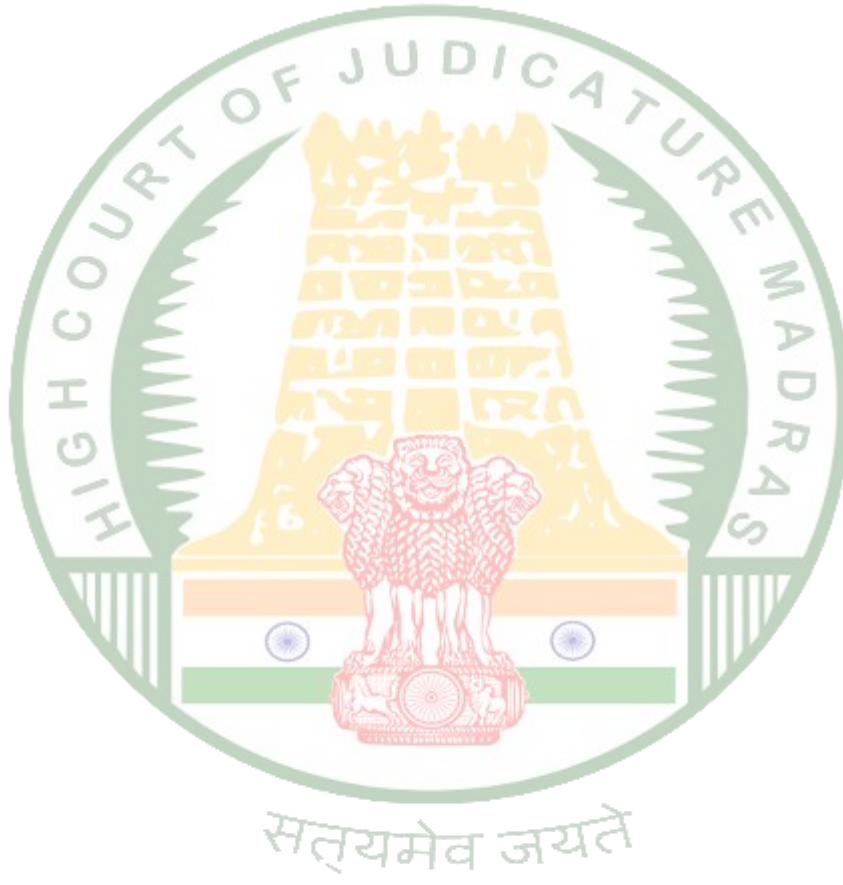
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