

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.381 of 2014
M.P.No.1 of 2014

The Management of
 Samaskara Academy Pattanam
 Ittery Road, Ondipudur,
 Coimbatore.

.. Petitioner

Vs.

1.Madhu
 2.Subramani
 3.Cholamandalam M.S.Insurance Co. Ltd.,
 "Dare House" 2nd floor
 No.2, N.S.C.Bose Road,
 Chennai 600 001.
 4.V.Sathish

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 25.10.2013 made in I.A.No.32 of 2013 in E.C.No.32 of 2012 on the file of Commissioner for Workmen Compensation/Deputy Commissioner of Labour, Coimbatore District.

For Petitioner : Mr.M.Sriram

For R1 : Mr.S.Saravanan
 for Mr.P.J.Rishikesh

For R2 & R3 : No appearance

For R4 : No appearance

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 25.10.2013 made in I.A.No.32 of 2013 in E.C.No.32 of 2012 on the file of Commissioner for Workmen Compensation/Deputy Commissioner of Labour, Coimbatore District.

2.The petitioner is the first respondent, first respondent is the petitioner and respondents 2 to 4 are the respondents 2 to 4 in E.C.No.32 of 2012. The first respondent filed the said petition claiming compensation for the injuries sustained by him in the accident that occurred on 03.09.2011. Originally, the first respondent filed the said petition against the petitioner and second respondent. Subsequently, the first respondent filed two applications to implead respondents 3 and 4. Both the applications were ordered and respondents 3 and 4 were impleaded as party in E.C.No.32 of 2012. The first respondent amended the claim petition and filed the amended copy. The petitioner filed additional counter affidavit and also filed present I.A.No.32 of 2013 under Order VII Rule 11 and Section 151 C.P.C for an order to reject the petition, E.C.No.32 of 2012. According to the petitioner, by amendment, the first respondent has added new parties and introduced new facts. As per

the averments in the claim petition, petition under Workman Compensation Act is not maintainable. Therefore, he filed petition to reject the claim petition, E.C.No.32 of 2012. The first respondent filed counter affidavit and opposed the said application. The Deputy Commissioner of Labour, Coimbatore District, considering the affidavit, counter affidavit and the judgment of the Division Bench of this Court reported in **2004 (1) LLN 567 (Guptha Enterprises, Madras Vs. Irusappan and another)**, dismissed the application, holding that C.P.C is not applicable.

3. Against the said order of dismissal dated 25.10.2013, made in I.A.No.32 of 2013 in E.C.No.32 of 2012, the present Civil Revision Petition is filed by the petitioner.

4. The petitioner has filed the present petition seeking to reject the claim petition, E.C.No.32 of 2012, on the ground that by amendment, first respondent has introduced new case and impleaded 2 more persons. The amended claim is contrary to the earlier claim and therefore, claim petition is liable to be dismissed. The learned counsel for the petitioner contended that claim petition is liable to be dismissed as per the provisions of Order VII Rule 11(a) and (d) of C.P.C. According to the learned counsel for the

petitioner, by amendment i.e., by impleading respondents 3 and 4, the first respondent is claiming that incident took place in the public road while the concrete mixer machine belonging to the second respondent was transported to the premises of the petitioner at the request of the fourth respondent for doing work in the petition building. The first respondent has not sought for any amendment to include certain averments in the claim petition and without their being any such order, the first respondent has added averments when Deputy Commissioner has ordered to implead respondents 3 and 4 only. The learned counsel for the petitioner further submitted that in the judgment reported in **2004 (1) LLN 567 (Guptha Enterprises, Madras Vs. Iruappan and another)**, relied on by the Deputy Commissioner, the Division Bench of this Court did not hold that C.P.C is not applicable to the proceedings before the Deputy Commissioner.

5. The learned counsel for the first respondent contended that the averments in the claim petition clearly proves the cause of action and liability of the petitioner and others to pay the compensation for the injuries suffered by the first respondent in the course of employment. The first respondent has initiated proceedings under Employees Compensation Act, 1923.

6. The issue to be decided in the Civil Revision Petition is whether claim petition filed by the first respondent can be rejected as per the Order VII Rule 11 (a) and (d) C.P.C. The Employees Compensation Act, 1923 is a specialised self-contained act and all the provisions of the C.P.C. is not applicable to the proceedings initiated under the act. The two provisions of the Employees Compensation Act, 1923 is relevant to decide the present issue. Section 23 of the Employees Compensation Act deals with powers and procedures of Commissioners. The said section reads as follows:

"23. Powers and procedure of Commissioners –

The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of [Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]]."

As per this section, Commissioner has all the power of Civil Court under the Code of Civil Procedure, 1908 only for the purpose of

taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects. Further, the commissioner shall be deemed to be a Civil Court for all the purpose of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

7.The Rule relevant to decide the present issue is Rule 41 of the Workmen Compensation Act, 1924. The said rule reads as follows:

"41.Certain provisions of Code of Civil Procedure, 1908 to apply – *Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908 namely, those contained in Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXIII, Rules 1 and 2 of Code of Civil Procedure shall apply to the proceedings before the Commissioners, in so far as they may be applicable there to:*

Provided that -

(a) *for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;*

(b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced.”

As per this Rule, only Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXIII, Rules 1 and 2 of Code of Civil Procedure shall apply to the proceedings before the Commissioners, in so far as they may be applicable there to.

8. Apart from the provisions mentioned in Rule 41 of Workmen Compensation Act, 1924, no other provisions of C.P.C is applicable to the proceedings before the Commissioner.

9. In view of Section 23 and Rule 41, it is clear that Order VII Rule 11 C.P.C is not applicable to the claim petition filed by the first respondent under Employee's Compensation Act, 1923. Petitioner is not entitled to an order to reject the claim petition filed by the first respondent. The petitioner has already filed additional counter affidavit. It is open to the petitioner to raise all these objections by filing additional counter affidavit when the first respondent and other parties let in evidence and also during

arguments.

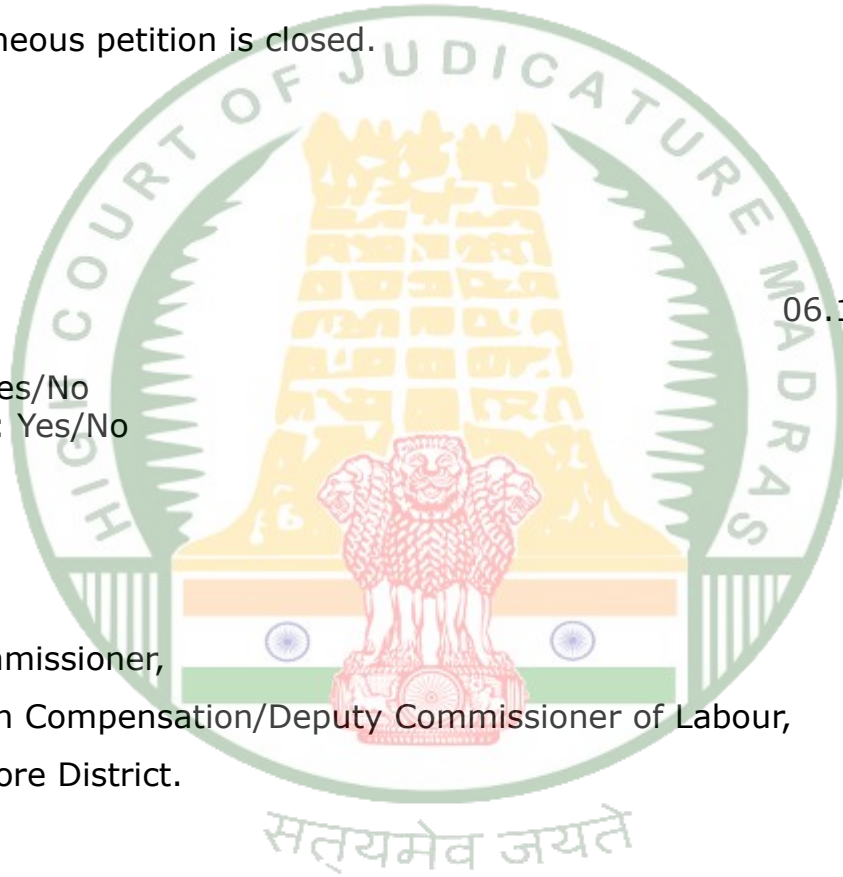
10. In the result, this Civil Revision Petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

06.12.2017

Index: Yes/No
Internet: Yes/No
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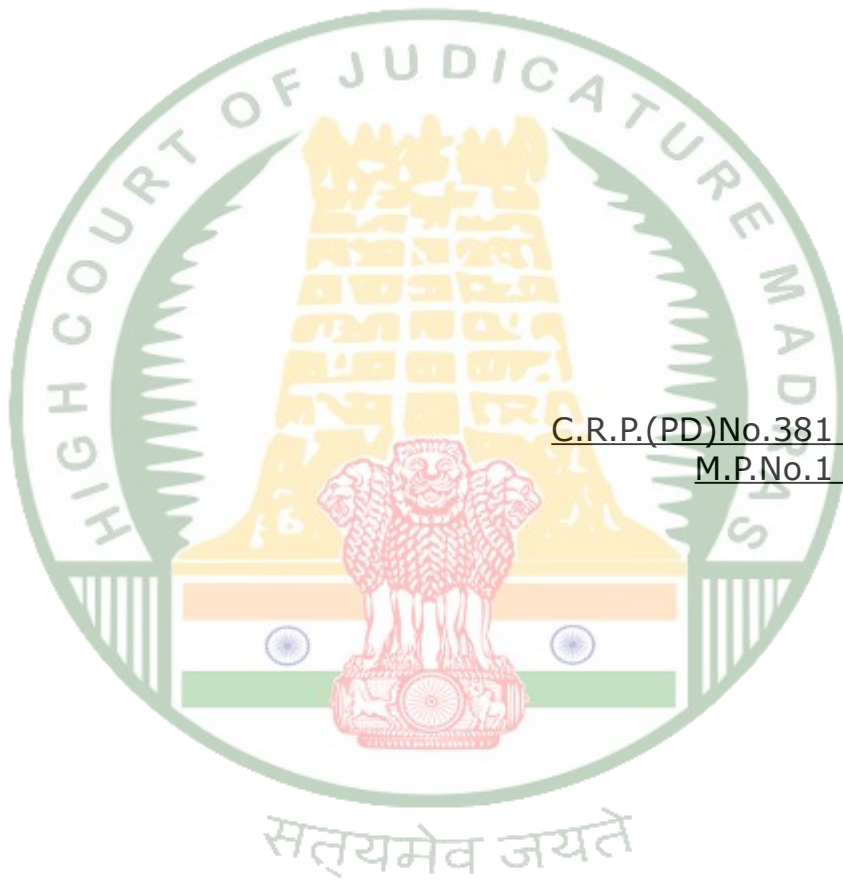
The Commissioner,
Workmen Compensation/Deputy Commissioner of Labour,
Coimbatore District.



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V.M.VELUMANI,J.

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