

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM

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

CRP.(PD). No.4264 of 2017
and C.M.P.No.20003 of 2017

1.J.Durai Raj
2.J.Pathmanaban
3.J.Manimaran

... Petitioners

Vs.

J.Ganesan

... Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order dated 13.06.2017 passed in I.A.No.334 of 2017 in O.S.No.45 of 2015 on the file of District Munsif Court, Thiruvarur.

For petitioners : Mr.M.Thamizhavel

For Respondent : Mr.C.D.Sugumar

ORDER

According to the revision petitioners, the respondent has filed a suit in OS.No.45 of 2015 before the District Munsif Court, Thiruvarur for permanent injunction. In the aforesaid suit, the

respondent has also filed an application in IA.No.2 of 2016 to amend the prayer by including mandatory injunction in the aforesaid suit. Counter affidavit has been filed by the revision petitioners, objecting the said application. However, the court below has allowed the application. Thereafter, the respondent has not carried out the amendment due to some defects in the petition. Without seeking clarification or modification or review in the above order, or liberty to file a fresh application, the respondent has filed the instant application in IA.No.334 of 2017 for the very same prayer as prayed for in IA.No.2 of 2016. According to the revision petitioners, the instant application is not maintainable on the ground that the instant application is barred by res judicata. Therefore, the court below has erroneously allowed the instant application, which is liable to be set aside.

2. Per contra, the learned counsel for the respondent would submit that it is true that the respondent had already filed an application in IA.No.2 of 2016 to amend the prayer and the same was allowed. But the said amendment was not carried out in the plaint due to insufficient particulars in the petition. Therefore, the trial court rightly allowed the second application. If the instant application is not allowed, the respondent would be put to

irreparable loss and hardships. Therefore, the order passed by the court below is perfectly valid in law. Hence, the Civil Revision Petition is liable to be dismissed.

3. In view of the submissions made by the learned counsel for the parties and on perusal of the materials, it is an admitted fact that the earlier application filed by the respondent in IA.No.2 of 2016 for amendment of prayer in the suit by including the mandatory injunction was allowed. It is admitted fact that the petitioner has not filed an appropriate application either to modify or review the earlier order for making necessary changes in the petition. Instead, the respondent has filed the instant application without seeking for liberty of the court below to file the subsequent application. In the interest of justice, the court below has allowed the present application for the reason that the said amendment is necessary to determine the suit. I am of the view that the respondent has filed the instant application without seeking permission of the court and filed the present application. Hence, the order passed by the court below in IA.No.334 of 2017 is set aside.

4. It is for the respondent / plaintiff to work out his

remedy before the court below in the manner known to law.

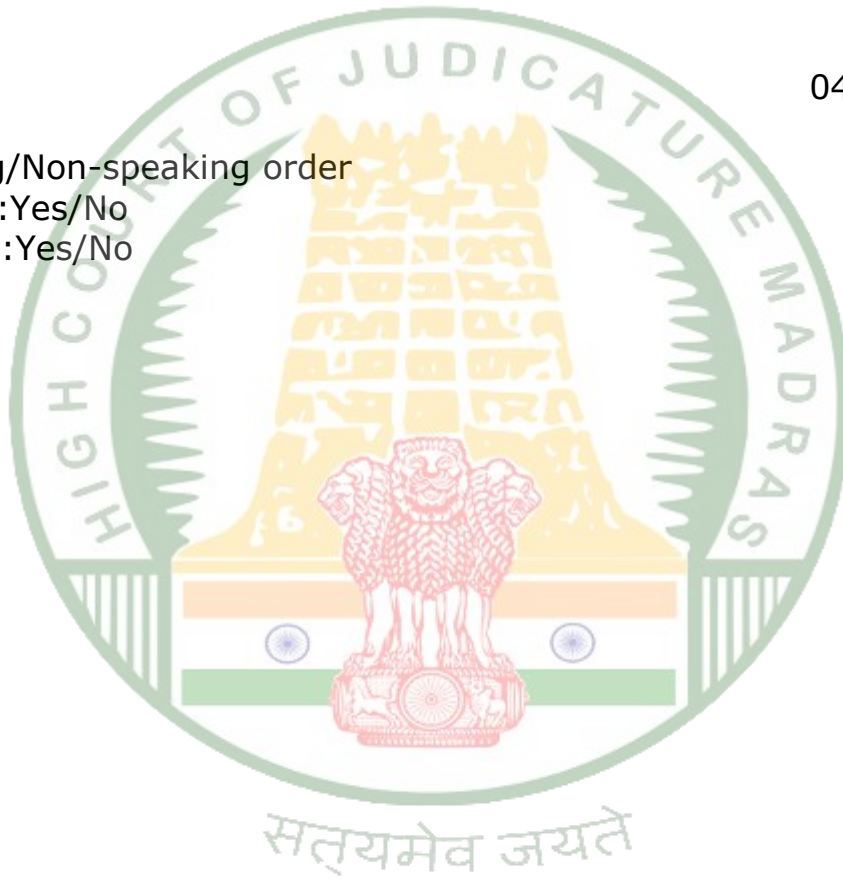
5. Thus, the Civil Revision Petition stands allowed. Consequently, the connected miscellaneous petition is closed. No costs.

04.12.2017

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No
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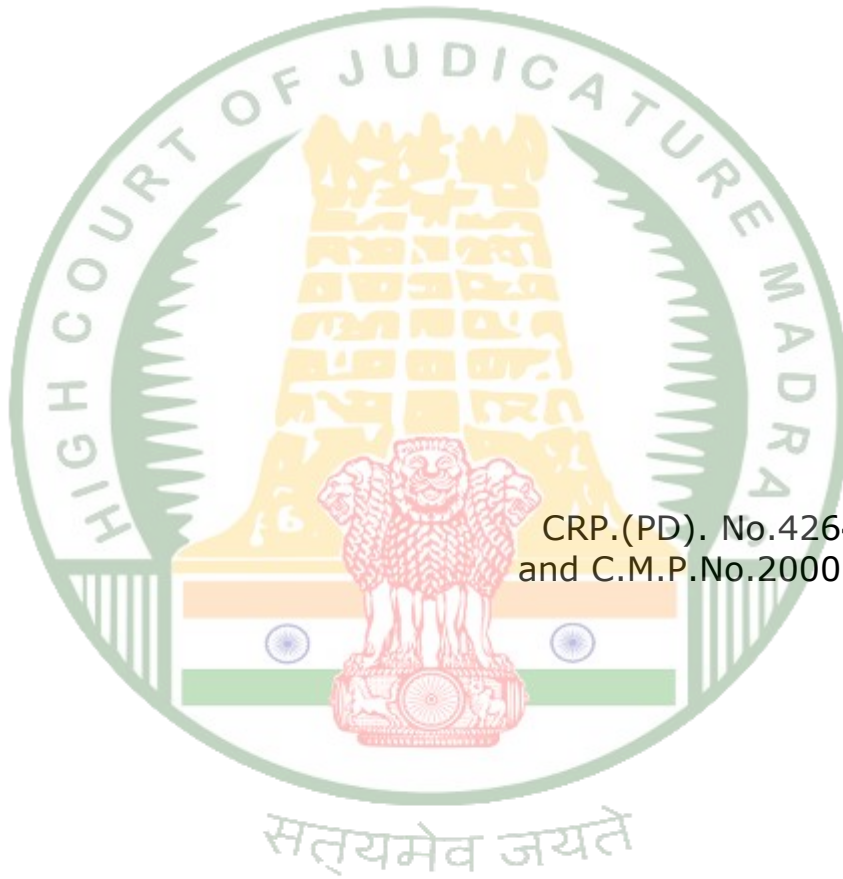
To
The District Munsif Court,
Thiruvavarur.



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D.KRISHNAKUMAR.J,

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