

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM

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

CRP.(NPD). No.4469 of 2017
and C.M.P.No.21105 of 2017

B.Vasudevan

..Petitioner

Vs.

A.N.Chandru

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 11.08.2017 passed in E.A.No.8/2017 in E.P.No.67 of 2011 in O.S.No.194 of 2010 on the file of the Hon'ble Sub-Ordinate Judge, Ranipet, Vellore District.

For petitioner : Mr.Pushpakaran

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According to the revision petitioner, the respondent has filed an execution petition in EP.No.67 of 2011 in OS.No.194 of 2010 under Order 21 Rule 37 of the Civil Procedure Code before the Subordinate Judge, Ranipet praying to issue notice to the revision

petitioner under Order 21 Rule 37 directing to pay the EP amount failing which the revision petitioner may be committed to civil prison by way arrest under Order 21 Rule 38 of the Civil Procedure Code. The said application was allowed. Subsequently, the EP was dismissed for default on the ground of non payment of batta and non-apperance. Therefore, the respondent has filed an application in EA.No.8 of 2016 in the above EP under Order 21 Rule 106 to set aside the above order and the same was allowed. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that under Order 21 Rule 106 of the Civil Procedure Code, the instant application is not maintainable as there is no power for the court below to entertain the application after dismissed for default in an execution petition.

3. On perusal of the impugned order, under Order 21 Rule 106 of the Civil Procedure Code, the respondent has filed the instant application to set aside the dismissal order passed for his non-appearance before the court. The said application was allowed by the court below.

4. It is useful to extract the provision under Order 21

Rule 106 of the Civil Procedure Code as follows.

"106. *Setting aside orders passed ex parte, etc.*

1. The applicant, against whom an order is made under sub-rule (2) of rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

2. No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

3. An application under sub-rule (1) shall be made within thirty days from the date of the

order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order."

5. In the light of the aforesaid provision, the present application is maintainable. Therefore, the contention of the revision petitioner is unsustainable and the same is rejected. There is no prima facie case is made out to entertain the Civil Revision Petition.

6. In the result, the Civil Revision Petition fails and accordingly the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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05.12.2017

Speaking / Non Speaking order

Index :Yes/No

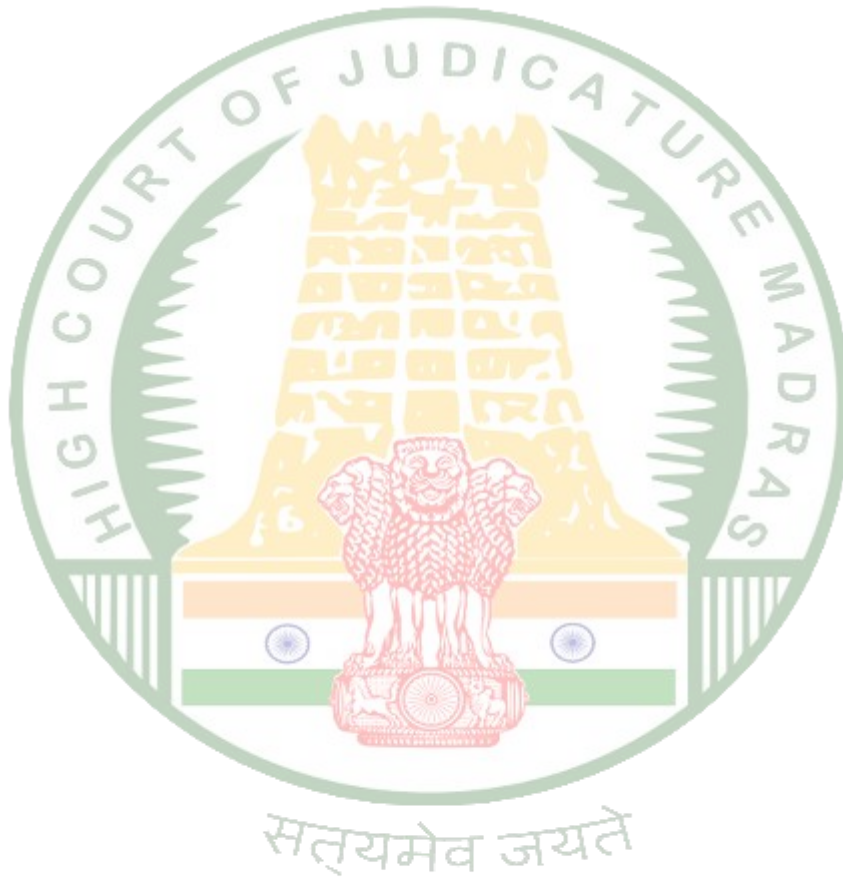
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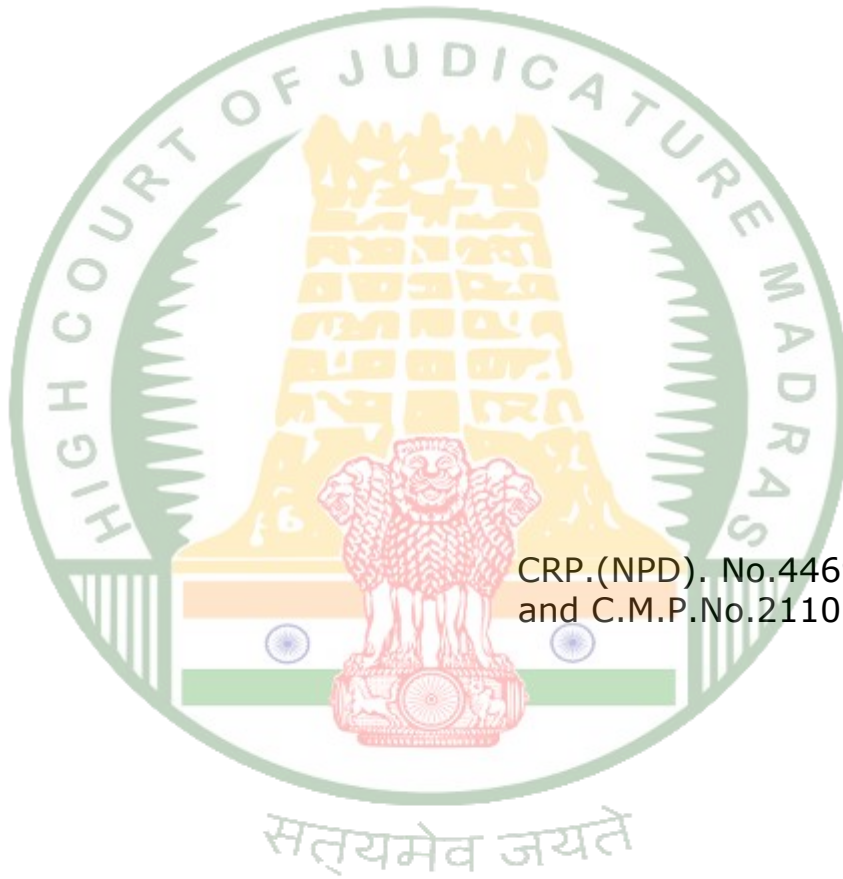
The Hon'ble Sub-Ordinate Judge,
Ranipet, Vellore District.



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D.KRISHNAKUMAR.J,

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