

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.296 of 2011

P.S.Gokul Doss

.. Petitioner

Vs

The Union of India rep. by its
Divisional Railway Manager,
Southern Railway,
Chennai 600 003.

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decretal order dated 22.10.2009 dismissing the petition in I.A.No.21824 of 2008 in O.S.No.1039 of 2001 passed by the learned VIII Assistant City Civil Judge, Chennai and praying for setting aside the same and to award compensation of Rs.1,70,100/- and to return 16 item of articles kept inside the VLR stall before its removal by the respondent.

For Petitioner : Mr.S.Jaganathan

For Respondent : Mr.J.Harikrishna

ORDER

The Petitioner herein by way of this Civil Revision Petition seeks to set aside the Fair and Decreetal order dated 22.10.2009 dismissing his Interlocutory Application in I.A.No.21824 of 2008 in O.S.No.1039 of 2001 filed by him as against the respondent Southern Railway.

2.The said suit is found to be filed to declare a Notice of Termination of license issued by the respondent Southern Railway to petitioner as null and void and further sought for a Mandatory Injunction to removal of the seal on the outer door sealing of the petitioner's stall in Kodambakkam Railway Station. Further he also sought for Mandatory Injunction to direct the respondent Railway Board to reconstruct the stall as it was pre-existed on the date of filing of the suit, enabling for extension of his license.

3.The records disclose that the revision petitioner carried out business in shop premises situated in Kodambakkam Railway station in the name of style of V.L.R. stall. In the said circumstance, citing some

infirmities the petitioner was issued with notice of termination of his license to carry out the business. Therefore the above suit is filed for the relief stated above.

4.The respondent board filed the written statement contending that the petitioner is not a licensee and hence he cannot maintain the suit.

5.The said suit is found to be partly allowed with a direction to the respondent authorities to pay compensation as to the cost of super structure to the revision petitioner. Whereas the Trial Court rejected petitioner's prayer in as much as the Mandatory Injunction reliefs are concerned.

6.Thereupon the revision petitioner filed an application praying the Trial Court to hold an enquiry so as to ascertain the value of super structure measuring 35 x 15 feet i.e. 525 square feet, so as to fix the compensation in line with the Decree contemplating compensation.

7.The respondent Authorities filed counter denying the alleged amount said to have spent by the petitioner for erecting super

structure measuring 35 x 15 feet i.e 525 square feet contending that it has no monetary value as the petitioner used only the pre existed structure. The said application was dismissed by Trial Court holding that the petitioner's claim is baseless and compensation is claimed at exorbitant rate.

8.I heard Mr.S.Jaganathan, learned counsel for the petitioner and Mr.J.Harikrishna, learned counsel for the respondent and perused the entire materials available on record.

9.It is not in dispute that the petitioner carried out the business in subject stall at Kodambakkam Railway Station. As already seen there is a civil decree directing the respondent Authority to pay compensation on submission by proof.

10.Admittedly there is no appeal prepared by the respondent as against the said operative portion of the Decree in as much as directing it to pay compensation towards 525 square feet 35 X 15 Super structure. Thus the decision as well the answer of the trial Court to the issue framed towards compensation of payment has become final.

11. Considering the above submissions and appraisal of oral and documentary evidence, I am of considered view that appointment of qualified Engineer to value the super structure will enable to the Court to arrive at proper decision. The Court below instead of rejecting the petitioner's claim in limine holding the claim is exorbitant and at excessive rate, it should have endeavored to fix the right compensation in line with decision that petitioner is entitled to compensation.

12. Thus the impugned Order suffers infirmity and the same is thus liable to be set aside.

13. In the result:

(a) this Civil Revision Petition is allowed, by setting aside the order passed in I.A.No.21824 of 2008 in O.S.No.1039 of 2011, dated 22.10.2009, on the file of the learned VIIIth Assistant Judge, City Civil Court, Chennai;

(b) the learned VIIIth Assistant Judge, is hereby directed to pass suitable orders by appointing a qualified Engineer to hold an enquiry and to ascertain the value of the superstructure measuring 35

X 15 feet i.e. 525 square feet erected at Kodambakkam Railway Station and file a report within a period of one month by giving notice to both the plaintiffs as well as the respondent/defendant;

(c) on receipt of the valuation report submitted by the Engineer, the learned VIIIth Assistant Judge, City Civil Court, Chennai, is directed to determine the quantum of compensation payable by the respondent/defendant for executing the decree dated 21.01.2008. No costs.

19.06.2017

Note: Issue order copy on 28.01.2019

vs

Index : Yes

Internet : Yes

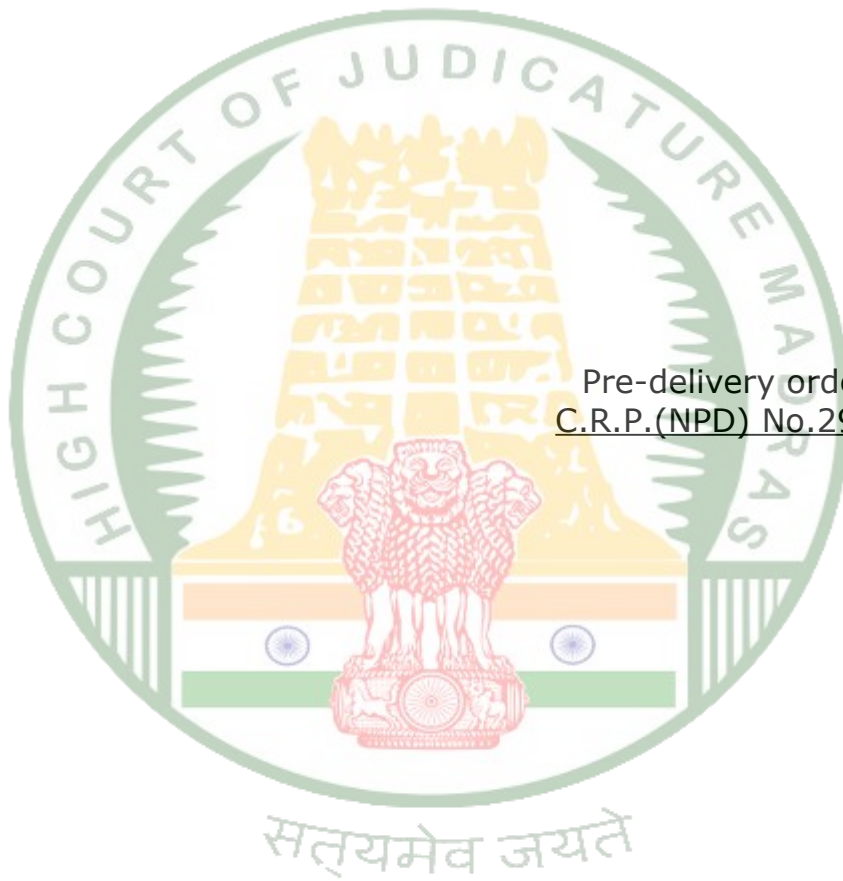
To

The VIII Assistant City Civil Judge,
Chennai.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(NPD) No.296 of 2011

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