

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

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THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.89 of 2017

Vijaya Bank
Egmore Branch
Chennai 600 008

... Petitioner

v.

1.P.Sathishkumar
2. G.K.Praveenkumar
3. P.Suchithra

... Respondents

Civil Revision Petition filed under section 227 of C.P.C., against the order dated 22.11.2016 passed in Memo in O.S.No.3312 of 2015 by the learned XVII Assistant City Civil Judge, Chennai and to set aside the same.

For Petitioner : Mr.S.Parthasarathy, Senior Counsel
for Mr.G.Bharadwaj

: Mr.A.Muthukumar
Amicus curie

O R D E R

Challenging the order dated 22.11.2016 passed in Memo filed in O.S.No.3312 of 2015 on the file of the XVII Assistant City Civil Judge, Chennai, the plaintiff/Bank has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.3312 of 2015 under Order XXXVII Rule 1 of the Code of Civil Procedure for recovery of a sum of Rs.98,214/- together with interest. The defendants remained exparte before the trial Court and has not filed any petition to leave to defend the suit. In these circumstances, the plaintiff's plaint documents were sought to be marked in the suit for passing an exparte decree. The trial Court, refused to mark the lawyer's notice dated 03.06.2015 sent by the plaintiff to the defendants and the Statement of Accounts, stating that necessary Court Fee has to be paid. The plaintiff filed a memo stating that there is no necessity for paying the Court Fee for the said two documents, since the said documents do not require any Court Fee as per Article 8 of Schedule II of the Court Fees Act. The trial Court, rejected the memo stating that the said two documents do require stamp duty.

3. It is settled position that only the documents which require levy as per Article 8 of Schedule II of the Court Fee Act require affixture of stamp at the time of marking of documents. The lawyer's notice and the Statement of Accounts does not come within the said provision, which require levy of stamp duty. In these circumstances, the trial Court has passed an erroneous order rejecting the memo, which is liable to be set aside and accordingly, the same is set aside.

4. The XVII Assistant City Civil Judge, Chennai, is directed to mark a copy of the lawyer's notice dated 03.06.2015 and the Statement of Accounts as Exhibits in the suit without insisting for affixture of stamp duty. The trial Court is directed to decree the suit in O.S.No.3312 of 2015, since the defendants had remained exparte and that they have not filed any petition seeking leave to defend the suit. The Civil Revision Petition is allowed. No costs.

5. Mr.A.Muthukumar, learned counsel was appointed as Amicus Curie to assist the Court and this Court places on record its appreciation for the assistance rendered to this Court.

17.03.2017

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To

The XVII Assistant City Civil Judge, Chennai

M. DURAISWAMY,J.,

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