

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) No.997 of 2017

L.Geetha

.. Petitioner

/versus/

Samuel Jayaseelan

.. Respondent

Prayer: Civil Revision Petition filed under Article 115 of Constitution of India against the order and decretal order dated 07.12.2016 made in C.M.P.No.76 of 2015 in A.S.No.165 of 2015 on the file of the learned XIX Additional City Civil Court, Chennai.

For Petitioner :Mr.P.Sankaranarayanan

For Respondent :Mr.M.Jaikumar

ORDER

This Civil Revision Petition has been filed praying to set aside the order and decretal order dated 07.12.2016 made in C.M.P.No.76 of 2015 in A.S.No.165 of 2015 on the file of the learned XIX Additional City Civil Court, Chennai.

2. According to the petitioner, the respondent herein has filed a suit in O.S.No.3741 of 2013 for mandatory injunction and the same was dismissed on 21.04.2015 by the XI Assistant Judge, City Civil Court, Chennai. Against the judgment and decree of the trial Court, the respondent herein has preferred an appeal in A.S.No.165 of 2015 before the XIX Additional Judge, City Civil Court,

Chennai. In the said appeal, the respondent herein filed an application in C.M.P.No.76 of 2015 under Order 41, Rule 27 of the Civil Procedure Code to permit him to file the additional documents and mark the same as A13 to A19 and the said application was filed belatedly (i.e.) subsequent to the dismissal of the suit, without following the procedure under Order 41, Rule 27 of the Civil Procedure Code. Unless the the petitioner has not satisfied the Court for allowing the said application, the same shall not be entertained. However, without any reason in the order, the appellate Court has allowed the application. Therefore, the order passed by the Courts below is unsustainable in law.

3. The learned counsel appearing for the respondent would submit that even though there is no finding by the appellate Court under Order 41, Rule 27 of the Civil Procedure Code, the petitioner can very well agitate the matter at the stage of hearing of the appeal and to raise objection before the Court while making the said documents.

4. In view of the submissions made by the learned counsel appearing on either side and by consent of both the parties, this Court is inclined to set aside the impugned order. Accordingly, the order dated 07.12.2016 made in C.M.P.No.76 of 2015 in A.S.No.165 of 2015 on the file of the XIX Additional Judge, City Civil Court, Chennai is set aside and the same is remanded back to the appellate Authority for fresh disposal. It is open to the parties concerned to satisfy the appellate Court under Order 41, Rule 27 of the Civil Procedure Code

at the time final hearing of the appeal. The appellate Court is directed to consider the provisions under Order 41, Rule 27 of the Civil Procedure Code and to decide the application in C.M.P.No.76 of 2015 on merits and in accordance with law. It is made clear that any observation made in the order will not influence the appellate Court to decide the said application on merits.

5. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.No.4883 of 2017 is closed.

06.04.2017

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To
The XIX Additional Judge,
City Civil Court,
Chennai.

D.KRISHNAKUMAR,J.

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C.R.P.(NPD).No.997 of 2017

06.04.2017

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