

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.905, 1406 and 1413 of 2015
& M.P.Nos.1,1 of 2015

G.Jayaradha

.. Petitioner
in all CRPs.

Vs.

C.R.Umapathy

.. Respondent
in all CRPs.

C.R.P.No.905 of 2015 is filed under Section 115 of C.P.C., against the fair and decretal order dated 12.02.2015 made in I.A.No.97 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

C.R.P.No.1406 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.03.2015 made in I.A.No.317 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

C.R.P.No.1413 of 2015 is filed under Article 227 of the

Constitution of India, against the fair and decretal order dated 24.03.2015 made in I.A.No.296 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

In all CRPs.

For Petitioner : Mr.P.Dinesh Kumar
For Respondent : Mr.R.Thiagarajan

COMMON ORDER

C.R.P.No.905 of 2015 is filed against the fair and decretal order dated 12.02.2015 made in I.A.No.97 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

C.R.P.No.1406 of 2015 is filed against the fair and decretal order dated 26.03.2015 made in I.A.No.317 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

C.R.P.No.1413 of 2015 is filed against the fair and decretal order dated 24.03.2015 made in I.A.No.296 of 2015 in O.S.No.11 of 2011 on the file of the III Additional District Court, Puducherry.

2. In all the three Civil Revision Petitions, the parties are one and the same and the issues are inter linked and therefore, they are

disposed of by this common order.

3. The petitioner is defendant and respondent is plaintiff in O.S.No.11 of 2011 on the file of the III Additional District Munsif Court, Puducherry. The respondent filed said suit against the petitioner claiming damages to the tune of Rs.5,84,000/- and to pay the water consumption charges from 1.1.2011 at Rs.100/- per day to the respondent till the date of vacating the petition premises. The petitioner filed written statement on 28.03.2012 and is contesting the suit. The respondent let in evidence and closed his side. The counsel for the petitioner on 27.10.2014 made an endorsement that there is no oral evidence on the side of the petitioner. The suit was posted for arguments. At that stage, the petitioner filed I.A.No.97 of 2015 under Order VII Rule 11(a) and (d) of C.P.C. read with Section 151 of C.P.C. for rejection of plaint on the ground that there is no cause of action to continue with the suit and the suit is barred by limitation. The said application was dismissed on 12.02.2015 on the ground that the application is filed at belated stage. Challenging the said order dated 12.02.2015 made in I.A.No.97 of 2015, C.R.P.(PD)No.905 of 2015 is filed by the petitioner/defendant.

4. The petitioner filed I.A.No.296 of 2015 under Section 89 read with Section 151 of C.P.C. for an order to refer the suit for mediation to either the Mediation Centre, Puducherry or Mediation Centre at Chennai for comprehensive negotiation of all the issues and other litigations between the respondent and petitioner. The said application was dismissed by order dated 24.03.2015 on the ground that this Court by order dated 04.03.2015 made in M.P.No.1 of 2015 in C.R.P.No.905 of 2015, referred the case to Mediation Centre, High Court, Chennai, on 19.03.2015 and hence, the said application is unwarranted and it is against the order of High Court. Against the said order dated 24.03.2015 made in I.A.No.296 of 2015, C.R.P.No.1413 of 2015 is filed by the petitioner/defendant.

5. The petitioner also filed I.A.No.317 of 2015 under Section 151 of C.P.C. to reopen the petitioner's side evidence and permit her to let in oral and documentary evidence. According to the petitioner, she did not let in any oral evidence on the ground that evidence of P.W.1 in his cross-examination clearly proved that his claims were false and there was no cause of action for continuing the suit. Even though the petitioner is having sufficient document and evidence to

defend the claim of the respondent, evidence of P.W.1 in his cross-examination convinced the petitioner that evidence of petitioner is not required at that stage. The petitioner filed I.A.No.97 of 2011 for rejection of the plaint and the said application was dismissed without giving opportunity to the petitioner to put forth her case. In view of the same, the petitioner has filed I.A.No.317 of 2015 for reopening the petitioner's side and permit her to let in oral and documentary evidence. On 26.03.2015, the said application was taken up for hearing. There was no representation on behalf of the petitioner. The learned Judge dismissed the application on perusing the record and endorsement made by the petitioner on 27.10.2014 that there is no oral evidence on behalf of the petitioner. Against the said order dated 26.03.2015 made in I.A.No.317 of 2015, the petitioner has filed C.R.P.No.1406 of 2015.

6. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7. As far as C.R.P.No.905 of 2015 is concerned, the petitioner filed I.A.No.97 of 2015 under Order VII Rule 11(a) and (d) for rejection of plaint. The evidence on behalf of the parties are closed

and the learned counsel for the respondent has argued the matter and when the suit is posted for arguments on behalf of the petitioner, the petitioner has filed said application for rejection of plaint. The application under Order VII Rule 11 of C.P.C. is maintainable at any stage of the suit before conclusion of trial. The averments made in the plaint and documents filed along with the plaint alone are to be considered to decide the said issue. In the present case, the petitioner has filed application, when the suit was posted for arguments on behalf of the petitioner. The petitioner has filed the application at belated stage, after conclusion of trial and after hearing the arguments of the respondent. Hence, the learned Judge has rightly dismissed the said application as belated one.

8. As far as C.R.P.No.1413 of 2015 is concerned, the petitioner filed I.A.No.296 of 2015 to refer the suit for Mediation to either the Mediation Centre, Puducherry or Mediation Centre at Chennai. According to the petitioner, as there are number of proceedings pending between the petitioner and respondent and the issue involved in R.C.A.No.9 of 2014 is related to the issue involved in the suit, all the matters are to be referred to Mediation. The learned Judge dismissed the said application considering the order of this

Court dated 04.03.2015 in M.P.No.1 of 2015 in C.R.P.No.905 of 2015, wherein this Court referred the case to Mediation Centre, Chennai. When this Court referred the matter to Mediation Centre attached to this Court, the learned Judge has no power to modify the said order. The learned counsel for the respondent submitted that Mediation held in this Court is also failed. In view of the above facts, there is no infirmity in the impugned order.

9. As far as C.R.P.No.1406 of 2015 is concerned, the petitioner has filed I.A.No.317 of 2015 for reopening the case and for letting in oral evidence on behalf of the petitioner. The petitioner has sought for reopening the case on the ground that she did not let in oral evidence as the evidence of P.W.1 in his cross-examination has clearly proved that claim of the respondent is false and there is no cause of action arisen for the suit. I.A.No.97 of 2015 filed by the petitioner to reject the plaint on the ground that plaint does not disclose any cause of action was dismissed. In view of the said dismissal, the petitioner has filed I.A.No.317 of 2015 for reopening the evidence of petitioner. The reason given by the petitioner for reopening and to let in evidence is not a valid ground for allowing the application. Further, the learned Judge has taken note of the

fact that the counsel for the petitioner has made an endorsement on 27.10.2014 that there is no oral evidence on the side of the petitioner and petitioner also did not deny the endorsement made by her counsel on her behalf. Further, the petitioner has filed application after the conclusion of trial and arguments on behalf of the respondent and when the suit was posted for arguments on behalf of the petitioner. Therefore, the impugned order dismissing the application filed by the petitioner needs no interference.

10. The learned Judge has given valid reason for dismissing all the three applications. There is no irregularity or illegality warranting interference by this Court with the orders of the learned Judge dated 12.02.2015, 24.03.2015 and 26.03.2015 made in I.A.Nos.97, 296 and 317 of 2015 respectively.

11. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

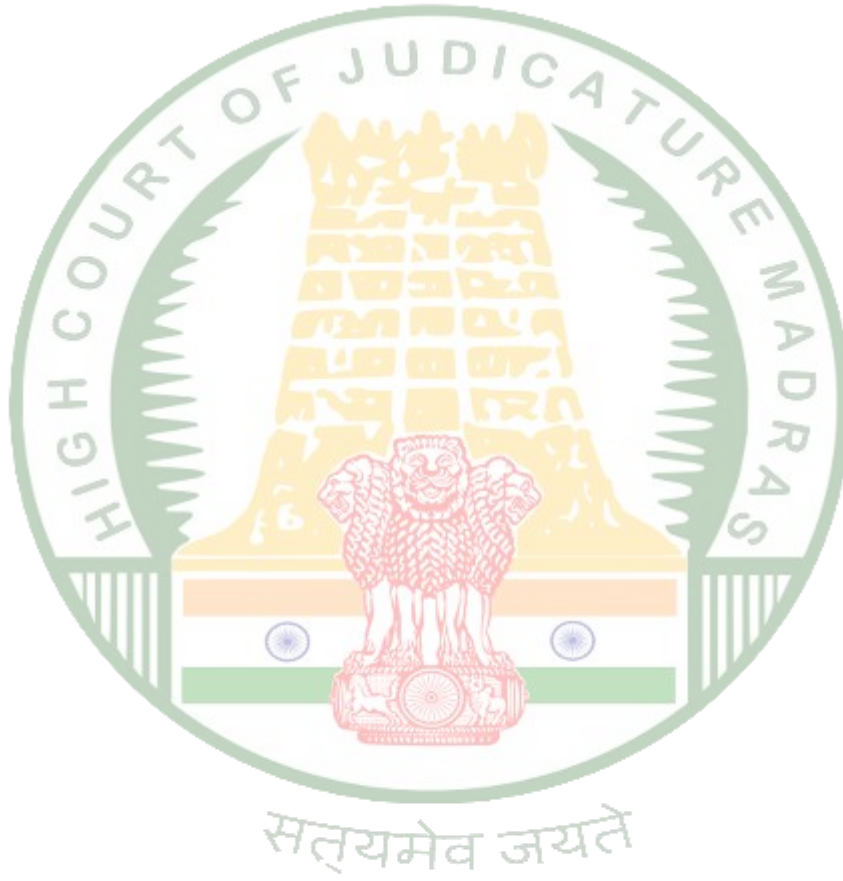
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Index : Yes/No

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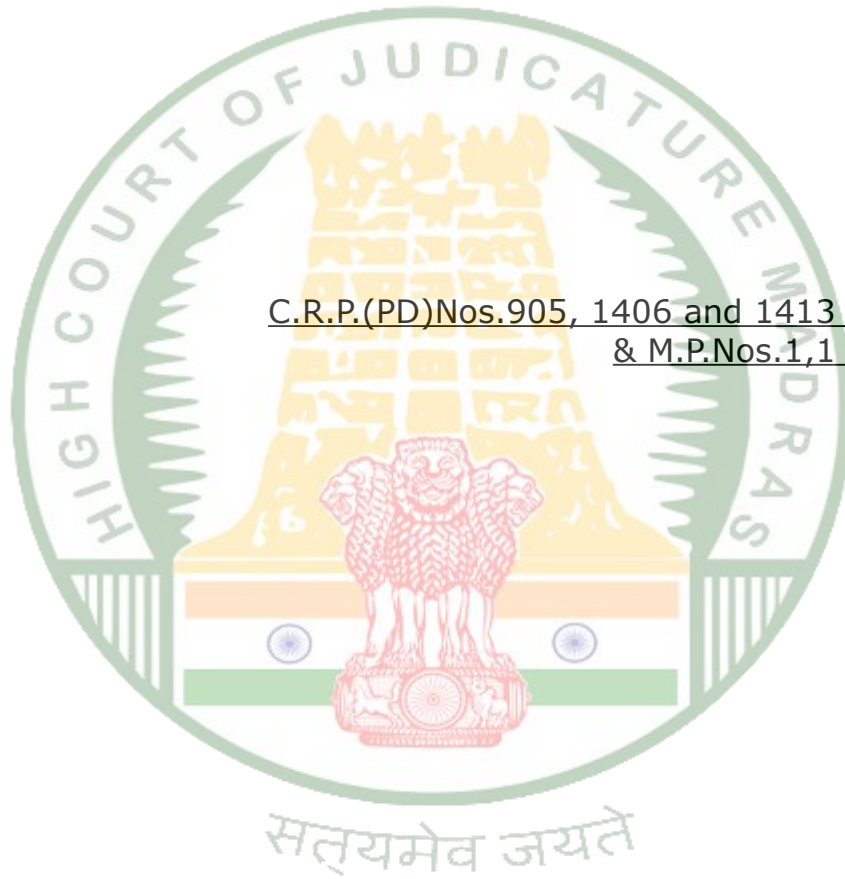
III Additional District Judge, Puducherry.



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V.M.VELUMANI, J.

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