

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. NPD No.60 of 2006

Judgment reserved on 28.08.2017	Judgment pronounced on 20.09.2017
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1.R.Muthusamy
2.R.Subramanian (deceased)
3.R.Chinnadurai
4.S.Balasubramanian
[4th petitioner brought on record as
LR of deceased 2nd petitioner vide
order of court dt.18.06.2014 made
in MP Nos.1 to 3 of 2014 in CRP
(NPD) No.60 of 2006]

Petitioners

Vs

1.The Secretary
Government of India,
(Mines and Petroleum)
Union of India, New Delhi

2.M/s.Hindustan Petroleum Corporation Ltd.,
Bombay

3.The Regional Mngaer
Hindustan Petroleum Corporation Ltd.,
Cochin Office,
18/3, Big Bazaar Veethi
Coimbatore – 1.

4.M/s.Rengasamy Naidu & Sons
No.100, Palladam Road,
Pollachi.

...

Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 196 to set aside the order passed in RCOP No.25 of 1996 dated 26.08.1999 on the file of Rent Controller cum District Munsif Court, Pollachi as confirmed in RCA No.4 of 2000 dated 29.06.2004 on the file of Sub Court, Pollachi.

For Petitioners : Mr.C.Prakasam

For Respondents : R1 dispensed with vide
court order dt.21/01/2013

Mr.M.Vijayan for
M/s.King & Patridge
for R2 & R3

Mr.N.Umapathi for R4

ORDER

This Civil Revision Petition is filed to set aside the order passed in RCOP No.25 of 1996 dated 26.08.1999 on the file of Rent Controller cum District Munsif Court, Pollachi as confirmed in RCA No.4 of 2000 dated 29.06.2004 on the file of Sub Court, Pollachi.

2. The petitioners are the landlords and the respondents are the tenants. The petitioners filed RCOP No.25 of 1996 on the file of District Munsif Court, Pollachi seeking an order of eviction against the respondents on the ground of wilful default. According to the petitioners, they are the owners of the suit property. On 05.11.1969, the petitioners' father leased out the property to EASSO Standard Eastern Inc. for 10 years. By Act 17 of 1977, lease was transferred to the second respondent. The third respondent is running the company on behalf of the second respondent. The fourth respondent is the dealer of the respondents 2 and 3. The lease deed dated 05.11.1969 was extended for a further period of 10 years by lease deed dated 01.07.1968 on a monthly rent of Rs.250/-. The petitioners' father Ramasamy Gounder died on 12.01.1983. There was a partition between the petitioners and their brothers and by partition deed dated 11.04.1986, the property was allotted to the petitioners. The respondents 2 and 3 did not pay the rent regularly and rent is in arrears from 01.01.1983 to 31.03.1993.

2. The petitioners' Advocate sent a notice dated 28.03.1992 to the third respondent. The third respondent sent reply dated

13.04.1992 enclosing forms of declaration, indemnity and authorisation. The petitioners, on 22.06.1992 returned the same to the third respondent duly filled up. The third respondent returned the same for some correction. The petitioners, after carrying out the corrections, returned the same to the third respondent on 13.11.1992. The third respondent insisted the petitioners to accept the monthly rent of Rs.400/-. The petitioners did not accept the same and informed the 3rd respondent, by letter dated 23.12.1992. The third respondent did not send any reply and the petitioners sent reminder dated 24.11.1992. Due to family necessity, the petitioners, by letter dated 17.05.1993 accepted the rent of Rs.400/- per month. The third respondent sent a cheque dated 11.05.1994 for Rs.54,800/-. Even after that, the third respondent did not pay the monthly rent regularly. For the months of June and July 1994, the third respondent sent cheques on 28.07.1994. Similarly, for the succeeding months also, the third respondent was not paying the rent every month but making delayed payment. The petitioners sent a notice on 11.11.1994 calling upon the respondents to vacate and deliver the vacant possession of the suit property. The respondent 2 & 3 sent reply dated 12.03.1996 containing false allegations. In the said circumstances, the petitioners filed the above RCOP for eviction of the respondents.

3. The third respondent filed counter statement and the same was adopted by the second respondent. According to the respondents 2 and 3, till the death of Ramasamy Gounder, the father of the petitioners, the rent was paid regularly. After the death of the said Ramasamy Gounder, on 12.01.1983, the cheques sent in the name of Ramasamy Gounder was returned . The petitioners submitted the legalheirship certificate and other documents only during the year 1992 & 1993. The respondents 2 & 3 are Central Government organisations and after obtaining legal opinion, entire arrears of rent were paid in one lumpsum and subsequent rents were paid in advance for every three months. The cheques sent by the third respondent dated 23.01.1996 for Rs.1200/- and 25.09.1996 for Rs.2400/- were returned by the petitioners. It is not correct to state that the respondents are not paying the rent regularly and committed wilful default.

4. The learned Rent Controller framed necessary points for consideration. Before the learned Rent Controller, one Subramaniam was examined as P.W.1 and thirty one (31) documents were marked as Exs.P1 to 31. The respondent examined

one C.R.Sivaraj as RW1 and marked thirty two (32) documents as Exs.R1 to R32. The learned Rent Controller, considering the pleadings, oral and documentary evidence, dismissed the RCOP holding that the respondents have not committed any wilful default. Against the said order of dismissal, the petitioners filed RCA No.4 of 2000 on the file of Sub Court, Pollachi. The learned Appellate Authority independently, considering all the materials on record and the order of the learned Rent Controller, dismissed the appeal confirming the order of the learned Rent Controller.

5. Against the said order dated 26.08.1999 passed in RCOP No.25 of 1996 confirmed in RCA No.4 of 2000 dated 29.06.2004, the present Civil Revision Petition has been filed.

6. The learned counsel for the petitioners submitted that the respondents have failed to pay the rent from 01.01.1983 to 31.05.1994 without any valid reason inspite of best efforts made by the petitioners. The said arrears of rent was paid in one lumpsum. Subsequent to the said payment also, the respondents were not paying the monthly rent regularly. They were making the payments only once in three months. It is the duty of the tenant to pay the rent every month. Even after filing of RCOP, the respondents did

not pay the monthly rent regularly. They deposited the rent into the court. They have not deposited the rent after complying Section 8 (2) to (5) of the Tamil Nadu Buildings (Lease & Rent Control) Act. In view of the said failure, the said deposit made by the respondents is not a valid one and the respondents have committed default in payment of rent which is deliberate and wilful. The Courts below failed to consider the fact that the respondents have not paid the rent every month and failure is wilful default.

7. The learned counsel appearing for the petitioners further submitted that WP No.1131 of 2003 was filed by the petitioners against the respondents praying for a direction, directing the respondents to vacate and deliver the vacant possession of the petition premises to the petitioners. This Court, by order dated 28.03.2003 allowed the writ petition directing the second respondent to vacate and handover the vacant possession of the petition premises to the petitioners within three months from the date of receipt of copy of the order. The learned counsel appearing for the petitioners filed additional typedset of papers containing extract of deposit register relating to RCOP No.25 of 1996 and submitted that the respondents deposited the rent after judgment during pendency of RCA and CRP in one lumpsum for various

periods from 01.04.2000 to 31.03.2017 on twenty (20) occasions. By these lumpsum delayed payments, respondents have committed wilful default.

8. The learned counsel for the petitioners relied on the following judgments -

(i) 1998 (2) MLJ 524 [B.Anraj Pipada v. V.Umayal]

6. When the eviction proceedings have been initiated on the ground of wilful default, one would expect the tenant to pay the rent regularly every month at least after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default.

(ii) 2006 (3) L.W. 844 [Bahadurmul Sowcar & another v. M.R.Lakshmanan & Ors.]

32. Sec.8 of the Act has to be read along with Sec.10(2)(i) of the Act. It is the statutory duty of the tenant to tender the rent in accordance with Sections 10 (2)(i) of the Act. It means that Sec.8 of the Act should be invoked by the tenant before the landlord gets a cause of action for non-payment of rent in time. A defaulter is not entitled to the benefits of the Act. Once the landlord gets cause of action, the subsequent refusal by the landlord is justified. When a tenant invokes Section 8(5) of the Act, it is his duty to pay the rent in court as and when

it becomes due. Instead of actually paying the rent to landlord, he gets discharged by paying the rent in court. That means, the court becomes the agent of the landlord and gives the tenant a discharge. Having committed default wilfully and intentionally, fully knowing about the consequences arising thereof, a tenant is not entitled to invoke Sec.8(5) of the Act.

(iii) 2004 (1) L.W. 773 [Hiluru Hameedha Begum v. Pappammal & another]

6.The tenant is not expected to keep silent and accumulate the rent and then turn round and say that the rent was tendered and the same was not accepted by the landlord. Only to avoid that kind of situation, Act specifically provides the modalities to be adopted by the tenant in the case of refusal by the landlord to receive the rent and if the tenant fails to do so, he cannot be heard to say, that he has tendered the rent and the same was refused by the landlord. Mere ipsi-dixit is not sufficient and in the absence of any materials, it could safely be concluded that the tenant has committed default in payment of rent, which default is willful and in our case also, the landlady made out a case that the non payment of rent by the tenant is willful and the tenant has not placed any material to dislodge such a conclusion and hence, the Order of the Rent Control Appellate Authority, in this regard, is not acceptable and the same is hereby set aside.

(iv) 1997 (2) MLJ 467 [Poorman's Depot Registration firm v. Krishnan]

10. The tenant is bound to pay the rent regularly as agreed. The subsequent conduct of the tenant can be taken into account to come to a conclusion whether there was any supine indifference on the part of the

tenant in payment of rent during the relevant period. The evidence available on record would prove that the tenant was in the habit of paying the rent irregularly. There is no wrong in taking into consideration of the cumulative effect of the conduct of the tenant in payment of the rent to assess the nature of default. The appellate authority has applied his mind with respect to the documents and evidence to come to the conclusion that the tenant has committed default in payment of rent wilfully. In the circumstances of the case and on the basis of the evidence of record, I am not in a position to take a different view.

(v) 2004 (4) I.w. 615 [P.M.S. Muhammad Suhail v. Subramanyan]

9..... The tenant deliberately and intentionally committed such default in payment of rent for the months of April, 1989 to December, 1989 and such default amounts to wilful, in that it is clear that the tenant deposited the arrears of rent as such only with the intention not to pay the rent regularly. Therefore, the landlord has made out the case for eviction on the ground of wilful default in payment of rent for the months of March, 1989 to December, 1989 by the tenant.

9. Per contra, the learned counsel appearing for the respondents 2 and 3 submitted that till the death of the petitioner's father, rent was paid without any default. After his death, the cheque sent in his name was returned with endorsement as "dead". The petitioners and his brothers partitioned all the properties of their father and petition property was allotted to the share of the

petitioners in the year 1986. When the respondents received notice dated 28.03.1992 from the advocate for the petitioners, immediately, the respondents sent necessary documents to recognize the petitioners as lessors. Only on 17.05.1993, the petitioners complied with the same and immediately respondents paid arrears of rent in one lumpsum. Subsequently, the respondents were paying three months rent in advance. From 1996 onwards, the petitioners refused to accept the cheque sent by the respondents and he returned it.

10. After 1996, the petitioners did not receive the rent in view of the pendency of R.C.O.P. Even during pendency of R.C.O.Ps, the Advocate for respondents tendered the rent on 11.03.1996. The petitioners' counsel refused to receive the same. This fact was admitted by PW1 in his deposition. The respondents deposited the rent into Court as petitioners refused to receive the same. The Section 8 (2) and 8 (5) are only procedural and are not mandatory. The deposit of rent made into Court without complying the said provision will not invalidate the deposit and respondents cannot be said to have committed wilful default. The respondents 2 and 3, as per the decisions of this Court reported in "**1995 (2) MLJ 211 [Rajalinga Chettiar And Ors. vs Nataraja Mudaliar]**", have

deposited the rent in to Court which is valid and legal.

11. According to the learned counsel appearing for the respondents, the Civil Revision Petition is barred by limitation and to be dismissed on the ground of limitation. The learned counsel submitted that the order of this Court dated 28.03.2003 made in W.P.No.1131 of 2003 was set aside by the Division Bench of this Court in Writ Appeal No.1767 of 2003. The learned counsel admitted the twenty (20) lumpsum payment made by the respondents 2 and 3 as submitted by learned counsel for petitioners and submitted that due to transfer of officers, the respondents 2 and 3 could not deposit the rent every month.

12. The learned counsel appearing for the 4th respondent submitted that petitioners have altered the date when the copy was made ready in order to file Civil Revision Petition. As per Section 25(2) of the Tamilnadu Buildings, Lease and Rent control Act, civil revision petition has to be filed within 30 days and this Court has power to condone another 30 days. Beyond 60 days, this Court has no power to entertain the civil revision petition. The learned counsel appearing for the fourth respondent relied on the following

judgments :

(i) 1984 MLJ 85 [M.M.Handalappa, A.G.B. Mudaliar & Co. v. Krishna Reddy & Co.]

16. The Supreme Court has taken the view that if on an examination of the relevant provisions of the special enactment and by looking into the scheme of the special law and each of the remedies provided therein, it appears that the Legislature has intended it to be a complete Code, then necessarily the provisions of the Limitation Act would be excluded, even in the absence of an express exclusions. There is no section in the Act to the effect that Sections 4 to 24 of the Limitation Act would not apply in respect of matters arising under Act XVIII of 1960. But, when Section 25 (2) not only prescribes a special period of limitation for preferring revision petitions to the High Court but also contains an inbuilt provision of an extended period within which petitions beyond the period of limitation could be instituted by conferring a discretion in the High Court to condone the delay within the prescribed period on sufficient cause shown it being unlike what has been provided under Section 23 of the Act and in the light of the decisions of the Supreme Court in Mohammed Ashfaq v. S.T.A.T., U.P. and S.S.T. v. Parson , it has to be held that Section 25 (2) itself contemplates an express exclusion of Section 5 of the Limitation Act.

(ii) 2003 (1) CTC 113 [M/s.Indian House v. Kishan N.Lalwani]

11. So far as the applicability of Section 5 of the Limitation Act is concerned the power of the Court to extend the prescribed period of limitation on the

ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to sub-Section (2) of Section 25 of the Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act.

(iii) 1997 MLJ 435 [Pattanswami v. Amirtha Jothi]

13. From a reading of Section 25(2) of the Act, it is clear that every revision petition under this Act shall be preferred to this Court within one month from the date on which the order was communicated to the petitioner and the Proviso to Section 25(2) of the Act empowers the High Court in its discretion to allow a further period not exceeding one month from the date of any such application. In the instant case, the time for filing the revision expired on 17-5-1996, which was during the summer vacation of this Court. Therefore, under Section 4 of the Limitation Act, the revision petition should have been filed on the day when the Court reopened on 10-6-1996 when it would be well within time. This, however, will not have the effect of extending the period of thirty days of limitation up to 17-6-1996 as contended by the learned Counsel for the petitioner. If this contention of the learned Counsel for the petitioner is accepted, the petitioner will have the double advantage of extended period of limitation for filing the revision on the day when the Court reopens after summer vacation under Section 4 of the Limitation Act when the period of limitation expired during the vacation of

the Court, and again filing a petition under the Proviso to Section 25(2) of the Act, seeking the discretionary power of the High Court to allow a further time of one month from the date of reopening of the Court after vacation.

13. Heard the learned counsel appearing for the petitioners and respondents and perused the materials available on record.

14. The petitioners have filed R.C.O.P for eviction of the respondents on the ground of wilful default. From the materials on record, it is seen that petitioners' father leased out the property to the predecessor of second respondent and second respondent became the tenant in the year 1997 as per the Act 19. According to the respondents, they paid rent regularly to the petitioner's father till his death on 12.01.1993. The rent sent in the name of the petitioners' father was returned with an endorsement as "dead". The petitioners, by the letter dated 28.03.1992 only, issued through their Advocate called upon third respondent to pay the rent. The petitioners complied with all the formalities only on 17.05.1993. Immediately on such compliance, the third respondent paid the rent due upto 31.03.1993. Subsequently, the respondents were paying rent regularly. In fact, the respondents were paying rent in advance once in three months. Petitioners only refused to receive

the rent and filed RCOP No.25 of 1996.

15. From the materials on record, it is seen that when the petitioners refused to receive the rent sent by the respondents, they did not follow the procedures contemplated under Section 8 of the Tamil Nadu Buildings (Lease & Rent) Control Act. They were sending cheques which was refused by the petitioners. Even after petitioners filed RCOP No.25 of 1996, the respondents 2 and 3 did not pay the rent upto date on the date of first hearing of RCOP. They tendered the rent on 11.03.1996 to the learned counsel for the petitioners in RCOP which was refused by him. Subsequently, the respondents 2 and 3 deposited the rent into court. The respondents 2 and 3 have not produced any materials to show that they were depositing the rent regularly every month.

16. On the other hand, the learned counsel for the petitioners submitted that even during pendency of RCA and CRP, the respondents 2 and 3 did not deposit the monthly rent every month. He further contended that respondents 2 and 3 did not file any appeal against the order fixing fair rent. In spite of the same, they did not pay rent fixed by the Court and they were paying the old rent in lumpsum. This court, directed both the learned counsel for

the petitioners as well as the respondents to file a memo furnishing the date and amount of rent deposited by respondents 2 and 3. The learned counsel for the petitioners filed a copy of court ledger showing payment made before and after judgment in RCA. The learned counsel for the respondents did not furnish any details of deposit made by the respondents 2 and 3 but accepted the details furnished by the petitioners.

17. The payments made by the respondents 2 and 3 as per court ledger is as follows -

BEFORE JUDGMENT

<i>Srl.No.</i>	<i>Challan No. / Date</i>	<i>Amount – Rs.</i>	<i>Period of Rent</i>
1	134 / 17.07.1998	10,800.00	27 months rent paid in lumpsum after filing of the suit in 1996 @ Rs.400/- per month
2	135 / 17.07.1998	2,400.00	6 months rent
3	256 / 16.10.1998	2,400.00	6 months rent
4	32 / 23.04.1999	400.00	1 month rent
5	67 / 23.04.1999	400.00	1 month rent
6	67 / 08.06.1999	800.00	2 month rent
7	120 / 16.07.1999	400.00	
8	160 / 10.08.1999	400.00	
9	398 / 25.01.2000	1,00,000.00	Difference of rent as per order and and rent upto

<i>Srl.No.</i>	<i>Challan No. / Date</i>	<i>Amount – Rs.</i>	<i>Period of Rent</i>
			2000)

AFTER JUDGMENT

<i>Srl.No.</i>	<i>Challan No. / Date</i>	<i>Amount – Rs. (@ R.2560/- p.m)</i>	<i>Period of Rent</i>
1	34/2000 DT.01.06.2000	30,720.00	01.04.2000 to 31.03.2001 (1 year)
2	42/2001-02 DT.01.06.2001	30,720.00	01.04.2001 to 31.03.2002 (1 year)
3	36/2002-03 DT.01.04.2003	30,720.00	01.04.2002 to 31.03.2003 (1 year)
4	CCD 82 DT.16.06.2003	30,720.00	01.04.2003 to 31.03.2004
5	CCD 177 DT.08.09.2005	61,440.00	01.04.2004 to 31.03.2006 (2 years)
6	14 DT.10.04.2006	30,720.00	01.04.2006 to 31.03.2007 (1 year)
7	331/12 DT.26.03.2013	1,84,320.00	01.04.2007 to 31.03.2013 (6 years)
8	275 DT.17.02.2015	30,720.00	01.04.2013 to 31.03.2014 (1 year)
9	434 DT.17.03.2015	30,720.00	01.04.2014 to 31.03.2015
10	179 DT.24.11.2016	30,720.00	01.04.2015 to 31.03.2016 (1 year)
11	115 DT.27.07.2017	30,720.00	01.04.2016 to 31.03.2017 (1 year)

18. From the above extract of court ledger, it is seen that respondents 2 and 3 have not paid the monthly rent every month, but have made payments irregularly in lumpsum. This Court can

take into account the subsequent event, after filing of RCOP also. From the deposits made by the respondents 2 and 3, it is clear that they have committed wilful default as they have deliberately failed to deposit the monthly rent every month, when it became due. The explanation of the learned counsel for respondents 2 and 3 that in view of transfer of concerned official, there is delay in deposit of rent is not an acceptable reason. From the year 1996 till 31.03.2017, the respondents have deposited the rent irregularly. From the details furnished by the learned counsel for the petitioners, it is seen that respondents 2 and 3, on 26.03.2013 deposited six years rent from 01.04.2007 to 31.03.2013. From 01.04.2000, respondents 2 and 3 were depositing rent only in lumpsum for one year at a time. In view of these delayed payment, I hold that respondents 2 and 3 have deliberately committed wilful default in payment of rent.

19. The contention of the learned counsel for the respondents 2 and 3 that as per the decision of this Court reported in **1995 (2) MLJ 211 cited supra**, Section 8 (2) & (5) of the Act are only procedural and not mandatory is without merits. The Hon'ble Apex Court in **R.Srinivasan v. V.Thangaraju and others reported in 1992 (2) MLJ 337** held that procedures contemplated in Section 8

of the Tamil Nadu Buildings (Lease & Rent Control) Act is mandatory and in view of the said judgment of Hon'ble Apex Court, the decision of this Court reported in **1995 (2) MLJ 211** cited *supra*, is no longer good law. In any event, in view of the lumpsum payment paid by the petitioners, I have already held that petitioners have committed wilful default. For the reason stated above, the judgment reported in **1995 (2) MLJ 211** cited *supra* is not applicable for the facts of the case.

20. For the foregoing reason, the order of the learned Rent Controller as well as judgment of Appellate Authority is liable to be set aside and it is hereby set aside.

21. The contention of the learned counsel for respondents 2 & 3 and 4th respondent that the petitioners have manipulated date of issue of copies of order in RCOP and judgment in RCA and therefore both the Civil Revision Petitions are barred by limitation cannot be entertained after a period of eleven (11) years of filing of CRP. The Registry had verified the copies of order and judgment filed by the petitioners and numbered the CRP. The registry has not raised any issue with regard to manipulation of date of order and CRPs are barred by limitation, at the time of numbering the CRP. In

view of the same, the above contentions of the learned counsel for the respondents 2 to 4 are rejected.

22. In the result, this Civil Revision Petition is allowed ordering eviction of the respondents from petition premises. No costs. The respondents are directed to vacate and handover the vacant possession of the petition premises to the petitioners, within two months from the date of receipt of a copy of this order.

20.09.2017

rg

Index : Yes/No

Note: Issue order copy by 21.09.2017

To

1.The Subordinate Judge,
Pollachi.

2.The District Munsif Court,
Pollachi.

सत्यमेव जयते
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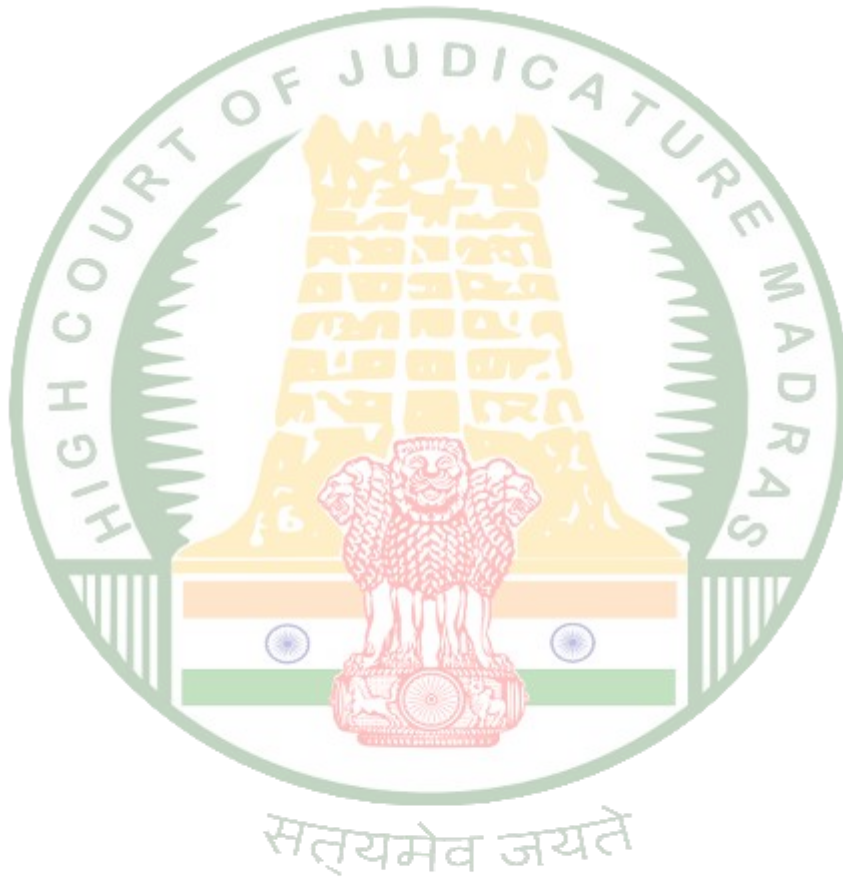
V.M.VELUMANI, J.

rgr



**Order in
C.R.P. NPD No.60 of 2006**

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