

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 22.12.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(NPD)No.1599 of 2001**

1.Meenatchiammal
2.Lakshmi
3.Ponni
4.Sarada
5.Sri Soma Sundaram
6.Sri Murugane

.. Petitioners

Vs.

1.P.Lakshmanan
2.P.Vadivelu
3.P.Saibaba

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Order and Decreetal order dated 09.12.1996 made in E.A.No.51 of 1991 in E.P.No.18 of 1991 in O.S.No.79 of 1984, on the file of the Court of the Principal Sub Judge, Pondicherry.

For Petitioners : Mr.V.Karunakaran

For Respondents : Mr.D.Senthil (No Appearance)
(for R1 to R3)

ORDER

The Petitioners have filed this civil revision petition to set aside the order and decretal order dated 09.12.1996 made in E.A.No.51 of 1991 in E.P.No.18 of 1991 in O.S.No.79 of 1984 on the file of the Court of the Principal Sub Judge, Pondicherry.

2.The case of the Revision petitioners is that the respondents herein filed a suit against them for recovery of possession in O.S.No.79 of 1984 and the same was decreed. Thereafter the respondents herein filed E.P.No.18 of 1991 before the Principal Sub-Court, Pondicherry for delivery. Pending disposal of the above execution petition the respondents herein filed E.A.No.51 of 1991 for appointment of qualified Engineer from PWD, Pondicherry to value the existing structure of the suit property. The said application was allowed by order dated 09.12.1996. Challenging the same the present civil revision is filed.

3.It is contended by the learned counsel for the respondents

herein in the said E.A.No.51 of 1991 that as per the terms of the decree, the petitioners herein should vacate and hand over possession of the suit property to the respondents herein within three months. In the meantime, the respondents herein should initiate action to find out the value of the existing super structure of the suit property as per the lease deed and make payment at the time of delivery of the property to the petitioners herein or as per the lease deed permit the defendants/petitioners herein to demolish the super structure and remove the same.

4.Despite the request made by the respondents herein to comply with the terms of the decree, the revision petitioners have not come forward to do so. The time for filing the appeal was also over. Therefore the respondents herein have come up with the above application seeking to appoint a qualified Engineer through PWD to value the structure of the suit property.

5.The revision petitioners have filed their counter to the said application contending that the application is not valid in law and not in accordance with the lease deed. It is not maintainable on the ground that the value of the property evaluated as on date would differ

completely as on the date of delivery. It is the contention of the learned counsel for the revision petitioner that the Engineer appointed by the lower court has given deductions to the electrical installation and sanitary arrangements which are all unwarranted and they have also filed objections to the report of the Executive Engineer.

6. Upon considering the rival submission, the court below was pleased to appoint a qualified Executive Engineer as Commissioner to ascertain the value of the building in question. It seems that the said Engineer is not from PWD and he submitted the report to the court. Based on the report of the Engineer, the court below has passed order on 09.12.1996 wherein the lower court fixed the value of the building / structure is Rs.14,21,330/-. The said order is challenged in this revision petition.

7. I heard Mr.V.Karunakaran, learned counsel for the petitioners and perused the entire records. There was no representation on behalf of the respondents.

8. It is seen from the record that the lower court has appointed an Executive Engineer to value the building namely Raja Theatre at

Pondichery and the Engineer has also filed his report by fixing the value of the said theatre is Rs.14,21,330/- after making certain deductions and allowing depreciation. After the report is filed to the court, both parties have filed their objection to the valuation report of the Engineer. The respondents herein stated that the Engineer had adopted higher rate. On the other hand the revision petitioners stated that the value adopted by the Engineer is value low and the deductions made by him is not proper.

9.A perusal of the report disclose that the Engineer has given deduction of Rs.2,19,302/- towards electrical installation and sanitary arrangements @ 15% and Rs.1,09,651/- towards internal water supply arrangements, totaling a sum of Rs.3,28,953/- was deducted. In the considered opinion of this court, the above said deduction to a sum of Rs.3,28,953/- by the Engineer which was accepted by the court below is not sustainable for the reason that the said amount has been incurred by the revision petitioners while installing the electrical materials and for having sanitary arrangements to the building / theatre.

10.That apart, this court is not able to find out the rates

specified by the Executive Engineer in his report for each items is the rate available from Public Works Department. The court below has not considered the above said aspect of the matter. Therefore interest of justice is required in this case and to meet the ends of justice this civil revision is liable to be allowed. Hence I am of the opinion that in order to ascertain the correct value of the building as per the rate available in the Public Works Department, Pondicherry and to fix the proper value of the structure of the suit property without giving any deductions to the electrical installation and sanitary arrangements, the matter is liable to be remitted back to the file of the Principal Sub-Court, Pondicherry.

11. In the result,

(a) this civil revision petition is allowed by setting aside the order and decretal order made in E.A.No.51 of 1991, dated 09.12.1996, on the file of the learned Principal Sub-Judge, Pondicherry;

(b) the matter remanded back to the learned Principal Sub Judge, Pondicherry for fresh consideration of fixing the value of the building as per the rate available in the Public Works Department, Pondicherry without deductions to the electrical installation and sanitary arrangements;

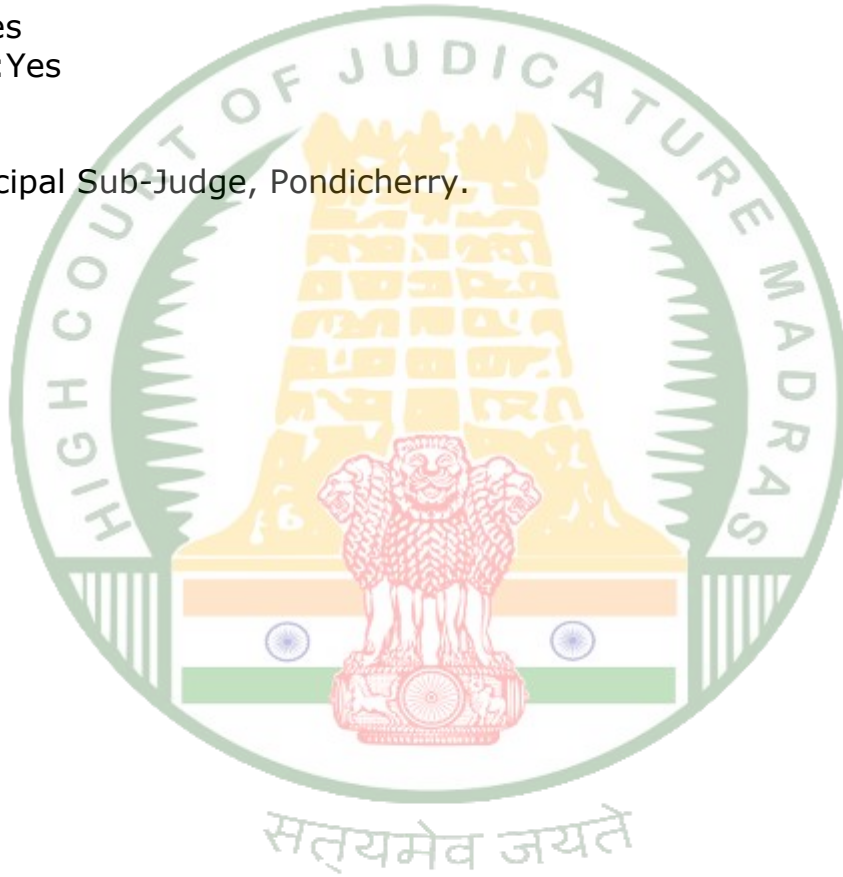
(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

22.12.2017

Note: Issue order copy on 09.04.2018
vs

Index: Yes
Internet: Yes

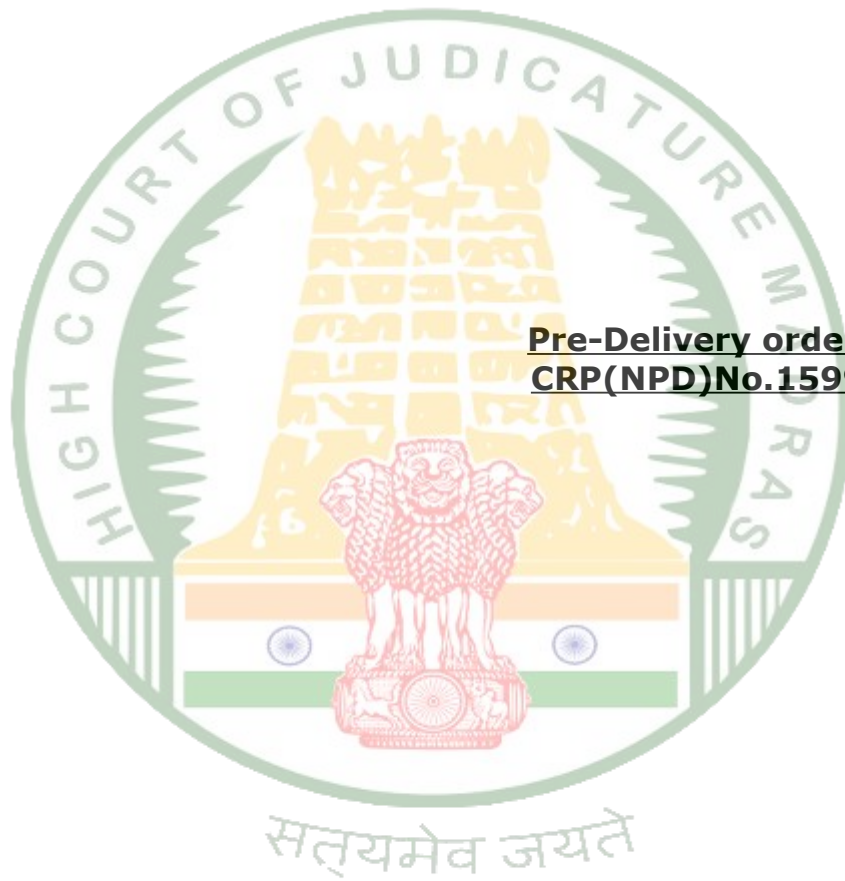
To:
The Principal Sub-Judge, Pondicherry.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.1599 of 2001**

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