

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.139 of 2018

Dr.Sivalingam

.... Petitioner

Versus

P.Vallinayagi

.... Respondent

Civil Revision Petition filed against the fair and decreetal order made in O.S.S.R. No.71059 of 2017, dated 13.12.2017 on the file of I Assistant (FAC), City Civil Court, Chennai.

For petitioner

:

Mr.P.Gunaraj

For respondent

:

Mr. Hari Radhakrishnan

ORDER

According to the petitioner, the revision petitioner has presented the plaint before the City Civil Court, Chennai. The prayer in the suit to direct the respondent/defendant to pay a sum of Rs.10 lakhs towards damages along with interest at the rate of 18% per annum from the date of suit till realisation. The Court below, even before numbering the plaint, has rejected the plaint on the ground that the respondent/defendant had sued the petitioner/plaintiff in good faith in exercise of discharge of his official duties.

2. The learned counsel for the petitioner would vehemently contend that the

<http://www.judis.nic.in> Court below, even before numbering the plaint, had gone into the merits of the claim made by the petitioner which is legally impermissible. In this context, reference was

made to the decision of this Court reported in ***R. Manickam and another vs. The Sengunthar Charitable Trust and others (2009 5 Law weekly 67)***, the relevant paragraphs are extracted hereunder :

"10. The litigants would be put to difficulties in case the Court of original jurisdiction drag them from pillar to post, even before registering the plaint. The attempt of the Court before registering the plaint should be to ascertain as to whether the procedural requirement for filing such a suit has been complied with by the plaintiff. The statutory provisions as contained under Order 7 Rule 1 of the Code of Civil Procedure prescribes the particulars to be contained in the plaint. In addition to the institution of the suit of general nature, there are suits in particular cases like the suit by or against the Government or public officers in their official capacity, inter-pleader suits, suits relating to public nuisance or other wrongful acts affecting the public at large as well as suits relating to public charities within the meaning of Section 92 of the Civil Procedure Code. There is a prescribed procedure contemplated for institution of such specified suits. The court was obliged to examine as to whether the plaintiff has complied with such fundamental procedures, and in case of such compliance, the Court has no other alternative than to register the plaint. The Court was not powerless even after registering the plaint. The statutory provision as per Order 7 Rule 11 of the Code of Civil Procedure enables the Court to reject the plaint at any point of time. It is not necessary to file written statement by the defendant for the purpose of exercising the jurisdiction to reject the plaint".

"12. When there is an in-built procedure in the Civil Procedure Code itself to consider the maintainability of the suit at a later point of time, the verification of the plaint at the time of registration should only be for the purpose of ascertaining as to whether the plaint satisfies the legal requirements as provided under the Civil Procedure Code."

3. The learned counsel for the respondent submitted that the said suit was dismissed at the un-numbering stage. Therefore, in the light of the aforesaid judgment this Court may pass appropriate orders.

4. Having regard to the submission of learned counsel for both sides and the decision of this Court rendered in **Manickam** case mentioned supra, this Court is inclined to pass the following order :

5. The Order passed in O.S. SR No. 71059 of 2017, dated 13.12.2017 is set aside and the matter is remanded to the Court below to consider the suit in accordance with the decision reported in **R. Manickam and another vs. The Sengunthar Charitable Trust and others (2009 5 Law weekly 67)** and to decide the same, within a period of three weeks from the date of receipt of copy of the order.

6. The Civil Revision Petition is allowed with the above directions. No costs.

26.03.2018

Index : Yes/No
Internet : Yes / No
Speaking/Non Speaking
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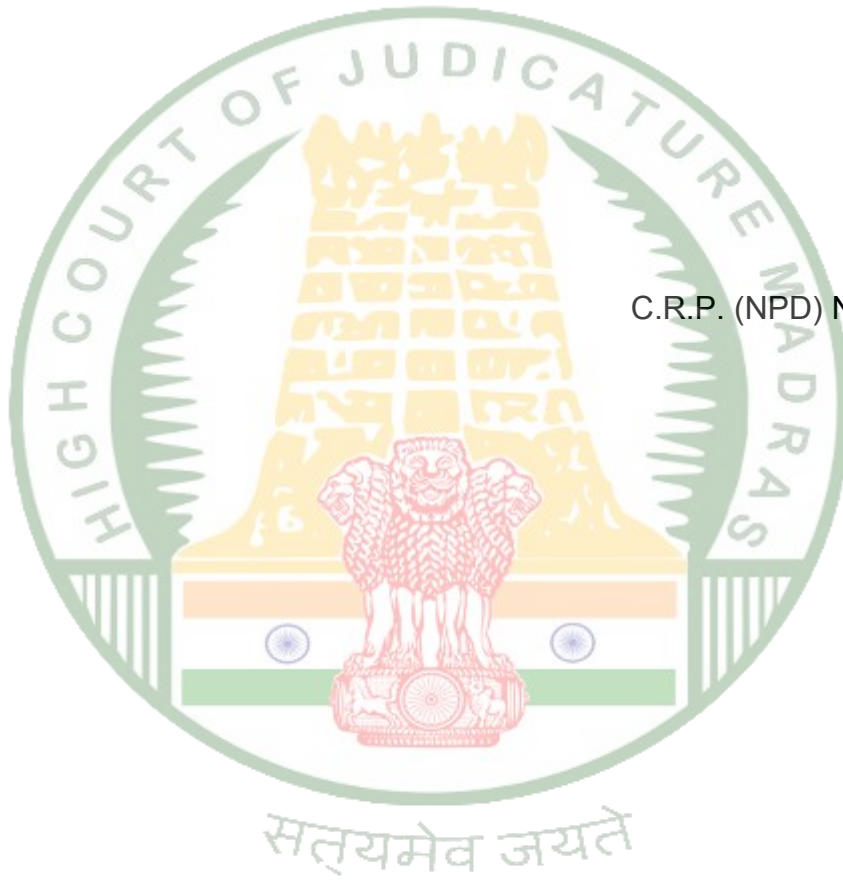
Issue Order copy on 28.03.2018

To
I Assistant (FAC), City Civil Court, Chennai.

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D.KRISHNAKUMAR, J.

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