

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 1470 of 2017

and

C.M.P. Nos.6836 & 13080 of 2017

D. Sivagurunathan

.. Petitioner

Vs

K. Regupathy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 04.03.2017 made in I.A. No.52 of 2017 in O.S. No.197 of 2016 on the file of the learned II Additional District and Sessions Court, Tiruvallur at Poonamallee.

For Petitioner : Mr. M. Rajasekhar

For Respondent : Mr. R. Selvakumari

ORDER

This revision petition is filed seeking to set aside the order dated 04.03.2017 made in I.A. No.52 of 2017 in O.S. No.197 of 2016 on

the file of the learned II Additional District and Sessions Court, Tiruvallur at Poonamallee.

2. The petitioner has filed the suit in O.S. No. 197 of 2016 under Order XXXVII, Rule 1 & 2 of CPC for recovery of principal sum of Rs.30 lakhs. In the aforesaid suit, the petitioner filed an application in I.A. No.30 of 2017 to direct the respondent to furnish adequate security to the extent of suit claim. The respondent filed his counter affidavit, admitting receipt of the principal amount from the petitioner and in paragraph 8 of the counter statement, it is stated that the petitioner is making all preparations to pay the entire amount due to the petitioner within a period of six months, by making some other alternative arrangements. Thereafter, the respondent filed an application in I.A. No. 52 of 2017 seeking to grant leave to defend the suit. According to the petitioner, the aforesaid application has been allowed by the court below, without passing a reasoned order. Challenging the aforesaid order, the petitioner has filed the present Revision Petition.

3. The learned counsel for the respondent would submit

that the respondent has filed the instant application before the court below, to grant an opportunity to the respondent, to put forth his claim in the aforesaid suit. Therefore, the court below has rightly allowed the application and hence the Civil Revision Petition is liable to be dismissed.

4. Heard the rival submission of the parties and perused the material available on records.

5. It is found that the respondent has filed his counter statement in I.A. No. 30 of 2017, stating that he would settle the due amount to the petitioner within a period of six months, by making alternative arrangement. Thereafter, he has filed an application in I.A. No.52 of 2017 seeking leave to defend the suit. The court below, without taking into consideration the earlier statement made by the respondent, has allowed the application holding that an opportunity has to be given to the respondent. The earlier statement of the respondent has not been taken note of, by the court below. The respondent has admitted the receipt of the amount, as claimed by the petitioner in the aforesaid suit and without passing any reasoned order, the court below has merely allowed the application, which is unsustainable and the same

is liable to be set aside. Therefore, this Court has no hesitation to interfere with the order passed by the court below and set aside the impugned order.

6. Accordingly, the Civil Revision Petition is allowed and the order dated 04.03.2017 passed in I.A. No.52 of 2017 in O.S. No.197 of 2016 by the learned II Additional District and Sessions Court, Tiruvallur at Poonamallee is set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.03.2018

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy next week]

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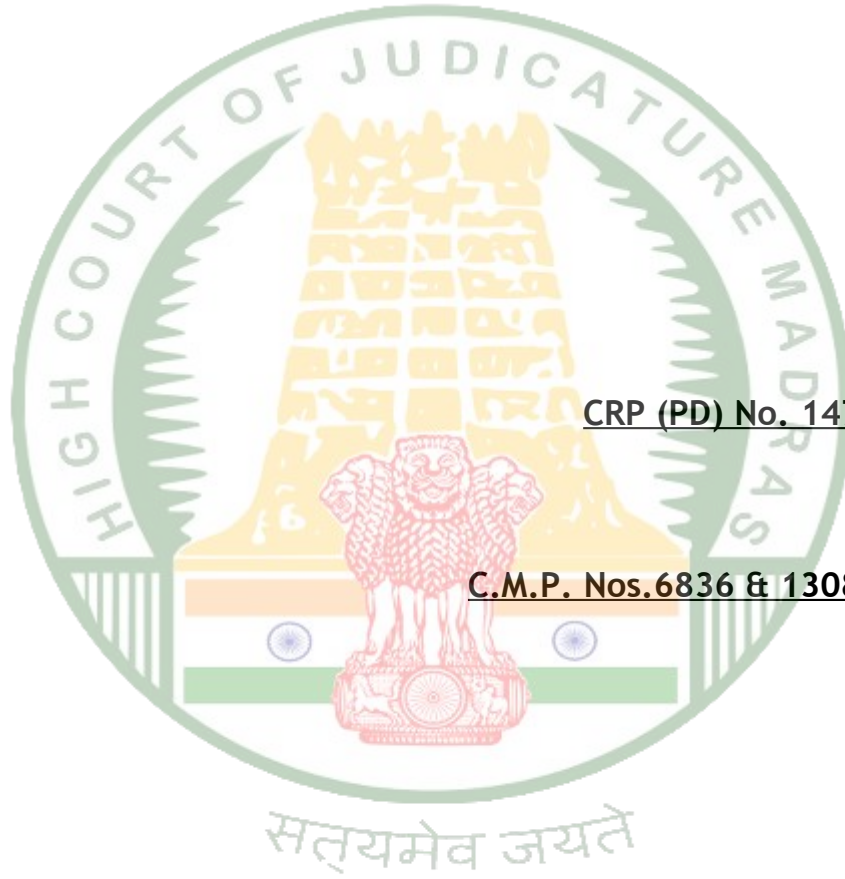
To

The II Additional District
and Sessions Court,
Tiruvallur at Poonamallee

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D. KRISHNAKUMAR J.,

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