

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(PD).No.1456 of 2018

and

C.M.P.No.7765 of 2018

T.Raju (deceased)

- 1.Thulukanam
- 2.R.Parthiban
- 3.R.Purushothaman
- 4.R.Sureshj
- 5.Kuppu

Sasikala (deceased)

- 6.Vijayalakshmi
- 7.P.S.Manoharan
- 8.S.Jayavani
- 9.N.Balaji

(Parties 7 to 9 are LR's of Late Saikala brought on record as per order in M.P.No.158 of 2014 dated 09.09.2014) &

(Petitioners 2,4,5,6,7,8 & 9 in M.P.342 of 2010 and Lrs of the deceased T.Raju in E.P.No.80 of 2007)

.. Petitioners

v.

S.P.Ramiah Nadar (deceased)

- 1.P.S.Kumaran
- 2.Prema
- 3.R.Sekar

(R3 impleaded as per order passed in M.P.No.776 of 2011 dated 05.08.2013)

.. Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Constitution of India, to set aside the fair and decreetal order passed by the learned Registrar, Court of Small Causes, Chennai in M.P.No.342 of 2010 in E.P.No.80 of 2007 in Ejectment SC. No.9 of 1992, dated 08.02.2018.

For Petitioners : Mr.B.Arokya Raj

For Respondents : Mr.K.V.Sundarajan

ORDER

Challenging the order passed by the learned Registrar, Court of Small Causes, Chennai in M.P.No.342 of 2010 in E.P.No.80 of 2007 in Ejectment SC. No.9 of 1992 dated 08.02.2018, the present revision has been preferred.

2.Heard Mr.B.Arokya Raj, learned counsel for the petitioners and Mr.K.V.Sundarajan, learned counsel for the respondents.

3.The only ground on which the petitioners herein challenges the rejection of their application filed under Section 47 of the Civil Procedure Code is that under Section 4(4) of the Madras City Tenants Protection Act, 1921, the respondents herein had not paid the amount of Rs.1000/- as ordered under the decree passed in Ejectment SC. No.9 of 1992 and in view of the Sub clause 4 of the

said Act, the suit is deemed to be dismissed. As such, the respondents herein cannot validly execute the decree.

4.The learned counsel for the respondents by drawing the attention of this Court to the affidavit filed by the deceased T.Raju in his application viz., M.P.No.2402 of 2004 in the Ejectment SC. No.9 of 1992 for setting aside the ex-parte decree dated 29.06.2004, submitted that the amount of Rs.1000/- ordered through the decree dated 29.06.2004 in the Ejectment SC.No.9 of 1992 have been complied and the same was borne out in the affidavit of T.Raju (deceased) dated 06.08.2004 where he had stated that he had received the letter dated 26.07.2004 along with a cheque of Rs.1000/- as compensation. When the petitioner (deceased) himself has come forward with the said statement in the sworn affidavit dated 06.8.2004 filed before the learned III Small Causes Court, Chennai, it will not be appropriate to raise a ground that a sum of Rs.1000/- ordered by the Court below has not been paid.

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5.The learned counsel for the petitioners further submitted that in the Execution Petition filed by the respondents herein it is revealed that the sum of Rs.1000/-, send by registered post, has been returned and therefore, it will not amount to proper remittance. Even this submission cannot hold good. The perusal of

the Execution Petition shows that a registered cover sent to T.Raju (deceased) has been returned with an endorsement "refused". In case, the deceased had refused the cover in which the sum of Rs.1000/- was claimed to have been enclosed, he cannot now take a stand that he had not received the amount, in view of his voluntary refusal and as such, the remittance is deemed to have been made and the respondents cannot be found fault for default.

6.In the light of the above observations, I do not find any infirmity in the order passed by the Court below and hence the Civil Revision Petition stands dismissed.

7.At this juncture, the learned counsel for the petitioners seeks indulgence of this Court to grant some time for vacating the suit property. Taking a sympathetic view that the petitioners have been in possession of the suit property for a considerable time, the petitioners are granted a further time of three months from today to vacate and hand over vacant possession of the suit property to the respondents herein and to this effect, the petitioners shall file a duly sworn affidavit before the trial Court within one week from the date of receipt of a copy of this order.

8.In the result, the Civil Revision Petition stands dismissed with the above observations. Consequently, connected Miscellaneous Petition is closed. No costs.

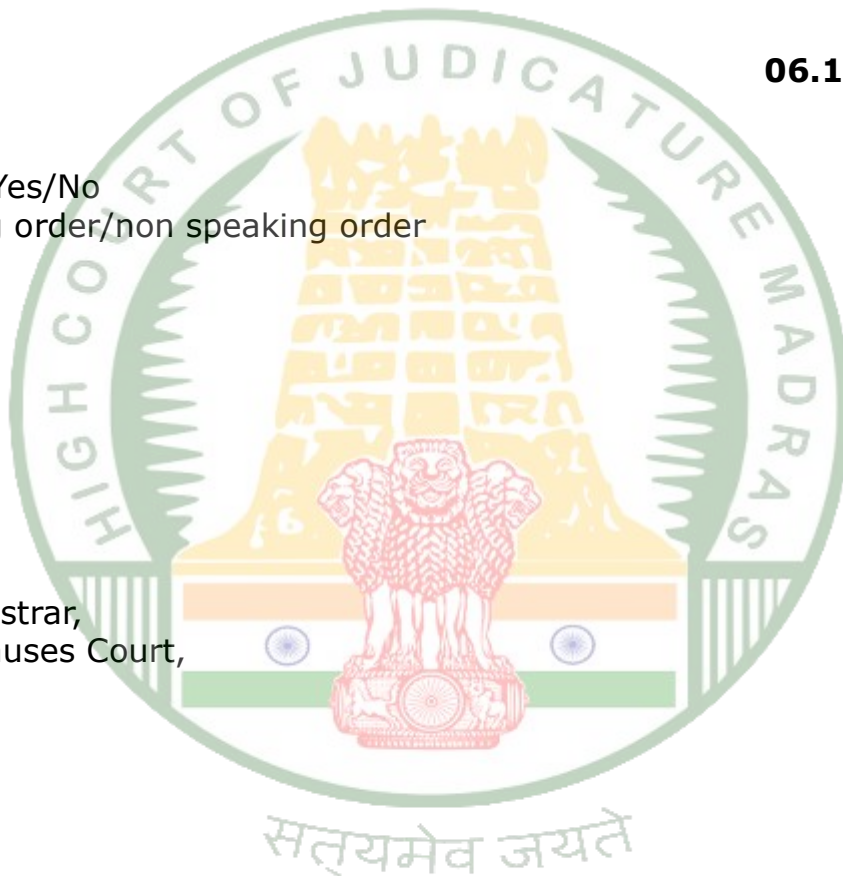
06.12.2018

Index : Yes/No
speaking order/non speaking order

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To

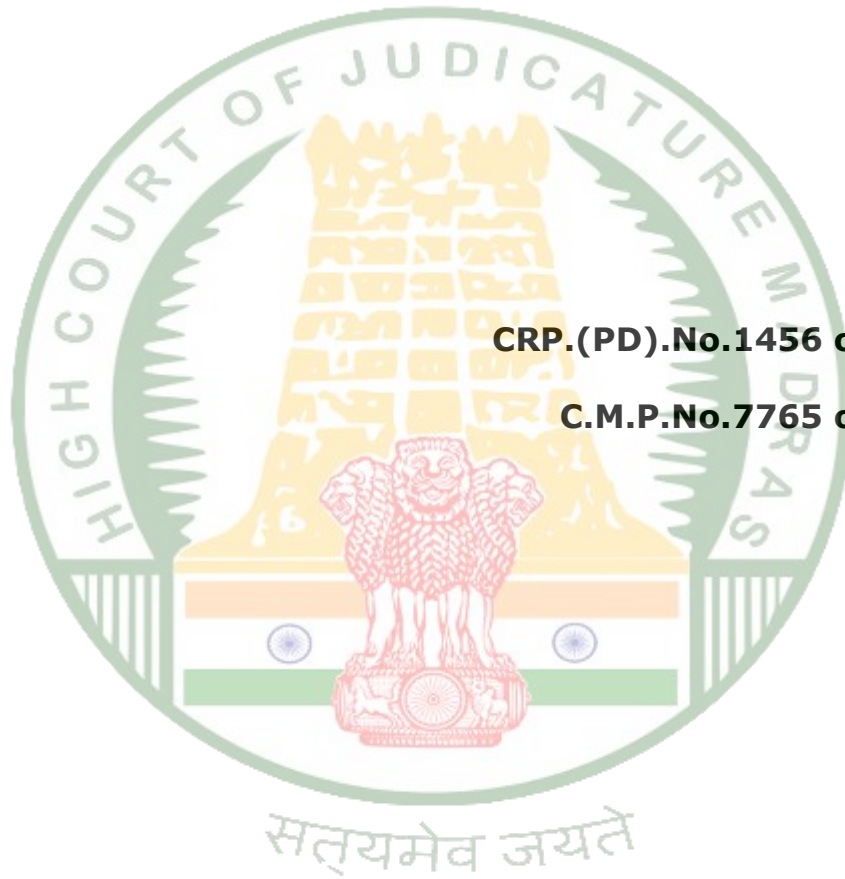
The Registrar,
Small Causes Court,
Chennai.



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M.S.RAMESH.J,

DP



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