

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.04.2018

CORAM

THE HON'BLE MR. JUSTICE **P.VELMURUGAN**

CRP.(NPD).No.1462 of 2018 &
CMP.No.7800 of 2018

A.Kirubakaran

... Petitioner

Vs.

K.M.F.Hospital,
Rep. by its Secretary,
Ricky Raj Johnstone,
Avenue College,
St. Luke Church Road,
Kottagiri, The Nilgiris.

... Respondent

Prayer : Civil Revision Petition filed Under Section 115 of C.P.C. to set aside the fair and final order dated 09.02.2018 made in I.A.No.51 of 2017 in A.S.No.65 of 2017 on the file of the learned Subordinate Judge, Coonoor and consequently allow the above Civil Revision Petition.

For Petitioner : Dr.R.Gouri

सत्यमेव जयते

ORDER

This Civil Revision Petition has been filed against the Order dated 09.02.2018, passed in I.A.No.51 of 2017 in A.S.No.65 of 2017, on the file of the learned Subordinate Judge, Coonoor.

2. In this case, the respondent/hospital filed a suit against the

revision petitioner in O.S.No.13 of 2009 on the file of the learned District Munsif at Kotagiri, to vacate the premises and to deliver the vacant possession thereof to the plaintiff, on failing compliance, to direct the revision petitioner/defendant to pay a sum of Rs.50/- per day towards damages for illegal occupation from 01.08.2008 till the date of the defendant vacating the suit premises. After filing the written statement by the revision petitioner, the suit was decreed in favour of the plaintiff. Feeling aggrieved with the judgment and decree dated 04.10.2018 passed in O.S.No.13 of 2009 by the learned District Munsif, Kotagiri, the revision petitioner/defendant has filed an appeal in A.S.No.65 of 2017 on the file of the learned Subordinate Judge, Nilgiris at Coonoor. In which, the revision petitioner filed an interlocutory application in I.A.No.51 of 2017 to stay the operation of Judgment and decree in O.S.No.13 of 2009 on the file of the District Munsif Court, Kotagiri till the disposal of the appeal under Order 41 Rule 5 of C.P.C. The lower appellate Court after receiving counter, heard both sides dismissed the application. Feeling aggrieved with the order passed by the lower appellate Court, the revision petitioner has preferred this present revision petition.

3. Admittedly, the revision petitioner was working as a Radiographer

in the respondent hospital. While he was working as a Radiographer in the respondent hospital, the revision petitioner was allotted quarters for residential purpose. Mean while he was terminated from the service by order dated 28.01.2008. The revision petitioner challenged the same before the Labour Court, Coimbatore in I.D.No.199 of 2010, which is pending. After termination, a notice was served to the revision petitioner to vacate the premises. Since he has not vacated the premises, even after receiving the notice, the respondent/hospital filed a suit for eviction in O.S.No.13 of 2009 before the District Munsif at Kotagiri and the same was decreed. Against the order, the revision petitioner filed an appeal in A.S.No.65 of 2017 on the file of the learned Subordinate Judge, Coonnor, wherein, the revision petitioner filed an interlocutory application in I.A.No.51 of 2017, to stay the operation of the judgement and decree in O.S.No.13 of 2009 on the file of the District Munsif Court, Kotagiri till the disposal of the appeal. The appellate Court dismissed the said application. The revision petitioner challenged that order. The appeal is till pending.

4. It is an admitted fact that the revision petitioner was terminated

from service. Therefore, there is no employer-employee relationship between the revision petitioner and the respondent/hospital. The respondent has also filed the execution petition, subsequently, it was represented that the respondent has taken the delivery of possession.

5. The learned counsel for the revision petitioner would submit that the revision petitioner has challenged the order of termination before the Labour Court, Coimbatore in I.D.No.199 of 2010 and the same is pending. Therefore the order of termination was under challenge and during the pendency of I.D., the revision petitioner is entitled to continue the occupation of the premises. The appellate Court has failed to consider the fact and redundantly passed the order of dismissal.

6. Admittedly, the revision petitioner was terminated by an order dated 28.01.2008, and the said order was under challenge. But as on date, the revision petitioner is not an employee of the respondent hospital and therefore, he is not entitled to continue to be in the occupation of the premises. Further as stated by the revision petitioner, there is an industrial dispute in I.D.No.199 of 2010, which is pending before the Labour Court,

Coimbatore. The appeal filed against the eviction order passed by the District Munsif Court, Kotagiri in O.S.No.13 of 2010 is still pending. In case if the revision petitioner succeeds in the I.D.No.199 of 2010, and he was re-instated, he can get either re-allotment or fresh accommodation. Therefore, under these circumstances, there is no merits in the revision petition and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition shall stand dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

27.04.2018

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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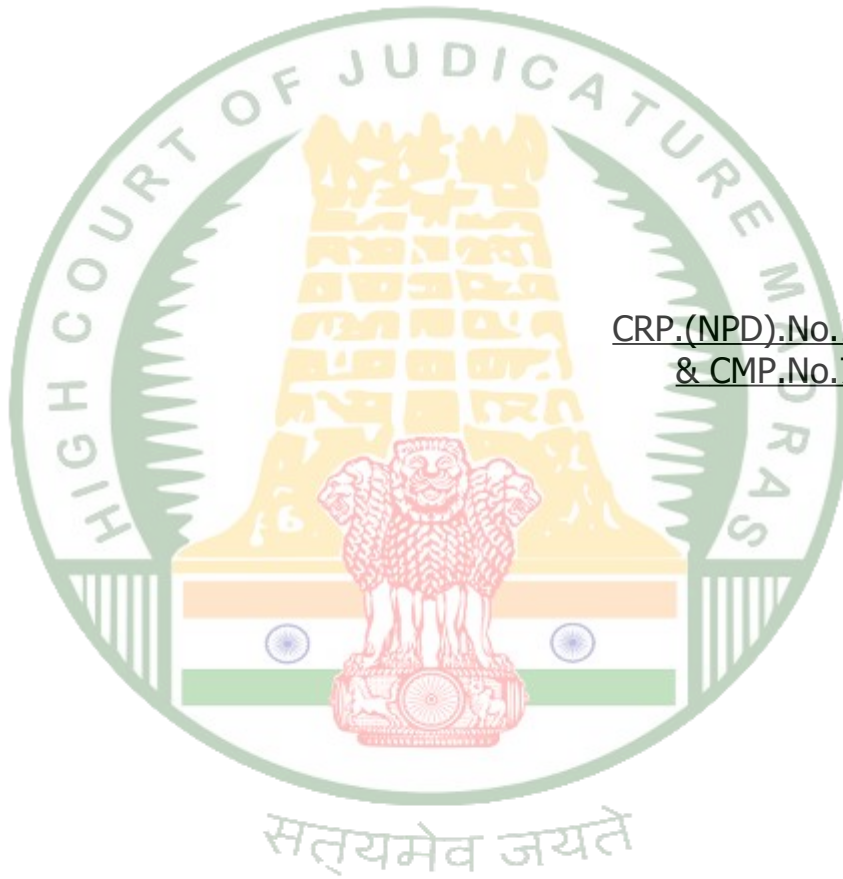
To

1. The Presiding Officer,
The Subordinate Court,
Coonoor.
2. The Presiding Officer,
The District Munsif Court,
Kotagiri.

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P.VELMURUGAN, J.,

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