

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

Coram:

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD).No.5205 of 2011

and

M.P.No.1 of 2011

R.J.Kamala

...Petitioner

Versus

Mukesh K.Shah

...Respondent

PRAYER Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order dated 29.09.2011 passed in I.A.NO.302 of 2011 in O.S.No.9061 of 2010 on the file of VI Additional City Civil Court, Chennai.

For Petitioner : Mr.Om Sai Ram

For Respondent : Mr.Sandeep Shah for
M/s Shah & shah

ORDER

The above Civil Revision petition is filed challenging the order dated 29.09.2011 passed by the learned VI Additional Judge, City Civil Court, Chennai in I.A.No.302 of 2011 in O.S.No.9061 of 2010.

2. The facts in brief are as follows:

2.1. The respondent herein has filed a suit in O.S.No.9061 of 2010 for recovery of a sum of Rs.20,48,664/- which includes interest at 12% per annum on the principal sum of Rs.15,16,261/- due on the three loans borrowed by the revision petitioner, in respect of which three promissory notes dated 17.04.2006, 11.09.2006 and 03.01.2008 were executed by the revision petitioner. The respondent/plaintiff in his pleadings stated that in response to the legal notice issued by him on 06.07.2009, the revision petitioner has sent a reply stating that only a sum of Rs.6 lakhs is due to the respondent/plaintiff by the revision petitioner. The revision petitioner had filed a written statement on 25.02.2011 and in paragraph 7 of the written statement, she has once again admitted that only a sum of Rs.6 lakhs is due.

2.2. Taking into account the admission made by the revision petitioner both in the reply notice as well as in the written statement, the respondent has come forward with an interlocutory application in I.A.No.302 of 2011, seeking the decree and judgment to be passed for the admitted sum of Rs.6 lakhs, without waiting for determination of the other question in the suit between the parties.

2.3. The revision petitioner has filed a memo to treat the contents of the written statement as the counter affidavit to the Interim Application.

2.4. The learned VI Additional District Judge, put up the matter

for enquiry and during the enquiry the respondent/plaintiff had marked all the pro notes, the notice sent by him, the reply notice etc as Exs.P1 to P7. After hearing the parties and looking into the pleadings, the learned VI Additional District Judge has passed an interim decree for a sum of Rs.6 lakhs. This order is challenged by way of the Civil Revision Petition.

3. The learned counsel for the petitioner reiterated the contents raised in the written statement.

4. Mr.Sandeep Shah, learned counsel appearing on behalf of the respondent/plaintiff would contend that the Civil Revision Petition is not maintainable, since it is a decree that has been passed and the remedy available to the revision petitioner is only to file an appeal under Section 96 of the Code of Civil Procedure. He would submit that the order that has been passed by the learned VI Additional District Judge is a decree as defined under Section 2(2) of the code of Civil Procedure.

5. Heard, both sides.

6. Section 2(2) of code of Civil Procedure reads as follows:

" *"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights*

*of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 2[***] Section 144, but shall not include-*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

1. Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

(2-omitted by Act 104 of 1976) "

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7. A reading of the same would clearly indicate that the order passed by the learned VI Additional District Judge is a decree falling within the ambit of Section 2(2) of the Code of Civil Procedure. Infact, the order is clear that it is a decree that is passed. Therefore, the only remedy that is available to the revision petitioner is to file an appeal under Section 96 of the Civil Procedure Code. Therefore, the Revision

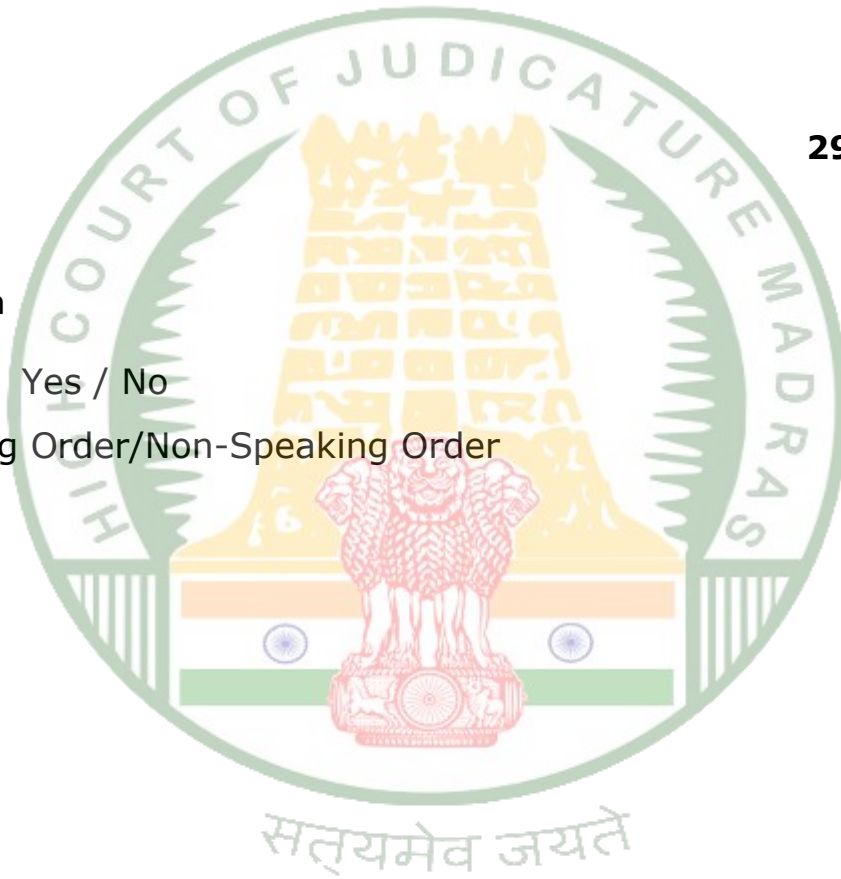
petition that has been filed by the revision petitioner is not maintainable and the same is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

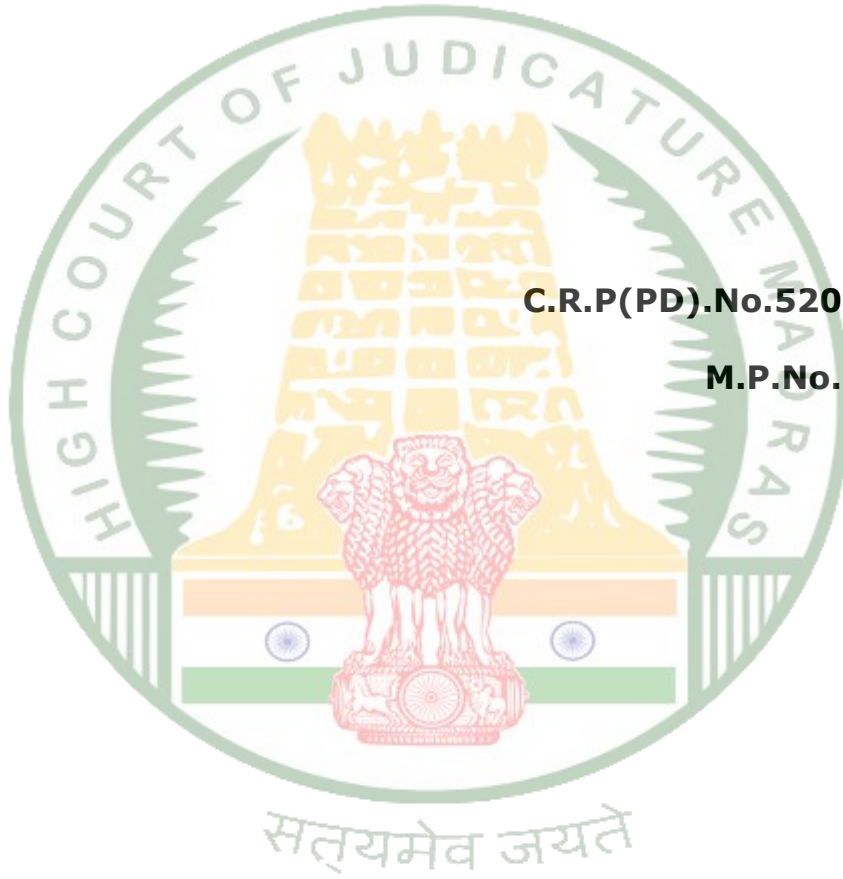
Speaking Order/Non-Speaking Order



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P.T.Asha, J.,

vkrr/kmm



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