

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.12.2018**

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[NPD] No.1505 of 2018

and

C.M.P.No.8056 of 2018

1.The Bhajrang Educational & Social Trust,
Bhajrang Engineering College,
Rep. by its Managing Trustee,
Mr.M.G.Baskaran,
S/o.M.Govindarajulu Naidu, office at
No.14, 3rd Main Road, Krishnapuram,
Thiruninravur R.S,
Poonamallee Taluk,
Thiruvallur District.

2.B.Kalavathi

.. Petitioners

Vs

1.A.Duruvasulu Naidu

2.A.Rama Moorthy Naidu

3.M.Balarama Naidu

4.D.Gobi

5.B.Prasad

6.R.Ramesh

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Order and Decreeal Order dated 04.04.2018 passed in I.A.No.13 of 2018 in A.S.No.20 of 2014 on the file of the I Additional District Judge, Thiruvallur and allow the Civil Revision Petition.

For Petitioners : M/s.C.Uma shankar
for M/s.P.Kumaresan

For Respondents : Mr.J.Thilagaraj for RR 1 & 2
RR 3 to 6 - No Appearance

ORDER

The petitioners' application under Order 41 Rule 27 came to be rejected, is under challenge in the present Civil Revision Petition.

2. By relying upon the Judgment of the Hon'ble Apex Court in Union of India vs. Ibrahim Uddin and another reported in **2012 (8) SCC 148**, the learned counsel for the petitioners submitted that the First Appellate Court may not have jurisdiction to reject the application filed under Order 41 Rule 27, which requires to be heard only at the final hearing of the appeal. The relevant portion of the said decision of the Hon'ble Apex Court reads as hereunder:

"Stage of consideration

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had

an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court."

3. This proposition has also been reiterated in various other decisions of the Apex Court as well as this Court. While the law stands, thus, the First Appellate Court was not justified in rejecting the petitioners' application under Order 41 Rule 27 on merits and at the threshold. On the other hand, the application could be taken at the time of final hearing of the appeal.

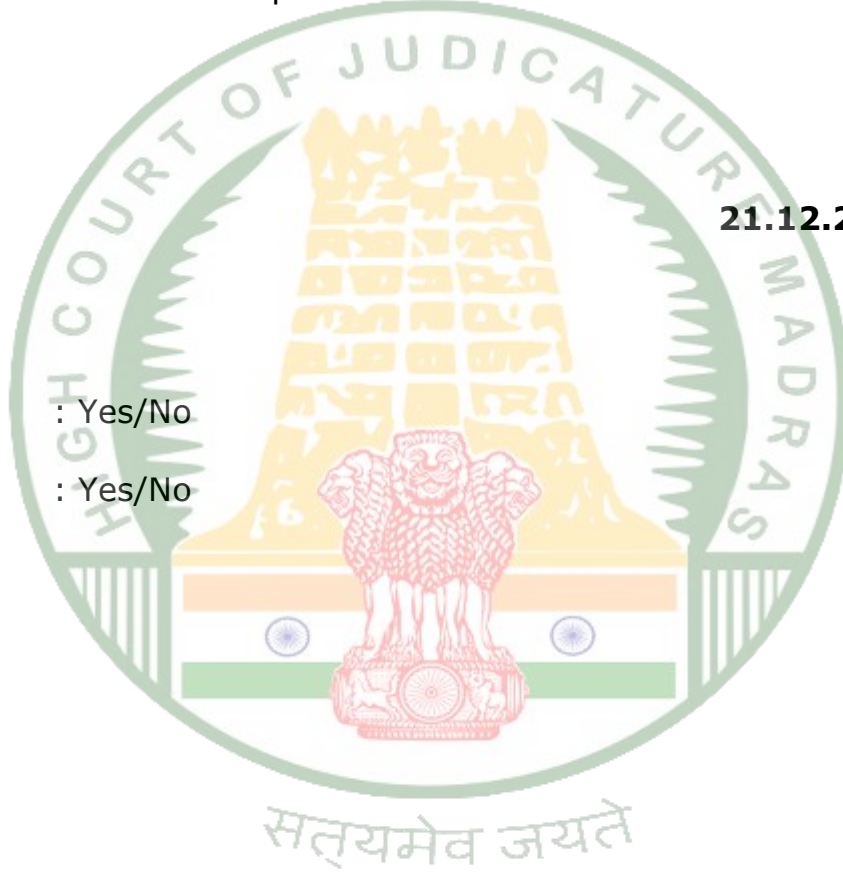
4. In the light of the above observations, the order dated 04.04.2018 passed in I.A.No.13 of 2018 in A.S.No.20 of 2014 is set aside. Consequently, the application filed under Order 41 Rule 27 is restored to file of the Learned First Additional District Judge, is directed to be taken up along with final hearing of the appeal in A.S.No.20 of 2014.

5. Accordingly, the Civil Revision Petition stands ordered and the First Appellate Authority shall endeavour to dispose of the A.S.No.20 of 2014, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

gsi/kmi

Index : Yes/No

Internet : Yes/No

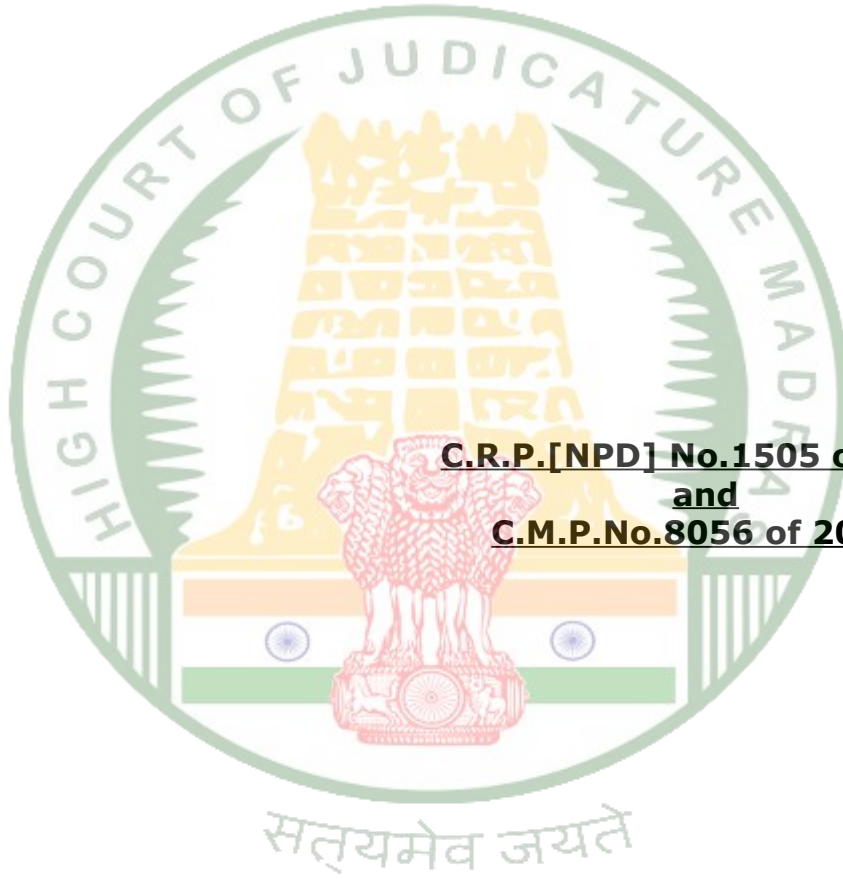


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M.S.RAMESH, J.

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