

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.4767 of 2017

and

C.M.P.No.22442 of 2017

Vishwa Hindu Vidya Kendra
By its General Secretary,
Vice President,
No.43, Ramanujam Street,
T.Nagar, Chennai 600 017,
represented by R.G.Ramasubbu

.. Petitioner

Vs.

- 1.Madras Divisional Railway Staff,
Staff Co-operative Building Society
Limited by President,
12/A, 5th Cross St, Mahalakshmi Nagar,
Adambakkam (West Velacherry)
Amended as per the order in
I.A.No.88/2014 in O.S.No.7424/2012
- 2.G.K.Shetty Hindu Vidyalaya
Matriculation Higher Secondary School,
Rep.by its Senior Principal and Correspondent,
Mahalakshmi Nagar, Adambakkam, Chennai 600 088.
- 3.D.Suryapragasam
(Impleaded as per order dated 26.07.2002 in
Appl.No.2666/2002)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in Unnumbered I.A in O.S.No.7424 of 2012

dated 17.11.2012 and direct the I.A.to be numbered and disposed on the file of XIX Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr. Niranjan Rajagopalan
For R1 : Mrs.Hema Sampath , Senior Counsel
For R2 & R3 : Given up

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed by the XIX Additional Judge, City Civil Court, Chennai, in Unnumbered I.A in O.S.No.7424 of 2012 dated 17.11.2012.

2. According to the petitioner, the first respondent/plaintiff herein has filed a suit in O.S.No.7424 of 2012 on the file of the learned XIX Additional Judge, City Civil Court, Chennai seeking declaration and recovery of possession. The revision petitioner has filed the application is unnumbered I.A.No. of 2017 in O.S.No.7424 of 2012 to file xerox copies of the scheduled mentioned documents instead of original in the above O.S.No.7424 of 2012 as secondary evidence. The said application was rejected by the Court below in the unnumbered stage. The Court below has passed an order dated 17.11.2017 which reads as follows:

“Unnumbered IA filed under Section 151 CPC stands rejected. Defendant side no evidence let in. Defendant side hence, is closed. For arguments by

21.11.2017. Unnumbered I.A. Heard the petitioner counsel. Seeks marking of xerox copies. Earlier a petition for documents reception, in I.A.No.25/2017 was dismissed on 08.11.2017 for having filed only xerox copies. Now the petition is filed under Section 151 CPC for the relief which is filed already to be dismissed in limine. Hence, this unnumbered petition stands rejected.

Challenging the order of the rejection, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit that the Court below has passed an order without numbering the I.A. was taken up for hearing and passed an order on merits and no opportunity was granted to the petitioner. Therefore, the order passed by the Court below is liable to be set aside.

4. The learned counsel for the respondents would submit that the Court below has rightly dismissed the application filed by the revision petitioner and therefore, the order passed by the Court below does not warrant any interference.

5. In the light of the decision of this Court in the case of ***G.V.Vanitha v. K.Dhanasekaran*** reported in **2016 (5) CTC 329**, this Court has held that the application cannot be disposed on merits without numbering the I.A.

6. In the light of the above said decision, the order passed by the Court below is liable to be set aside. At this stage, the learned Senior counsel appearing for the respondents has requested this Court that the said application has to be numbered and the same shall be disposed within a time frame, after affording opportunity to the respondents.

7. In view of the submissions made by the learned counsel for both sides, this Court is inclined to pass the following orders:

i) the impugned order in unnumbered I.A.No. /2017 in O.S.No.7424 of 2012 on the file of the learned XIX Additional Judge, City Civil Court, Chennai, is liable to be set aside.

ii) The Court below is directed to number the I.A. if it is an order, immediately.

iii) After numbering the I.A., the court below is directed to dispose of the application on merits and in accordance with law, on or before 31.01.2018.

iv) the respondents herein shall file counter affidavit on or before 12.01.2018.

With the above observation, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

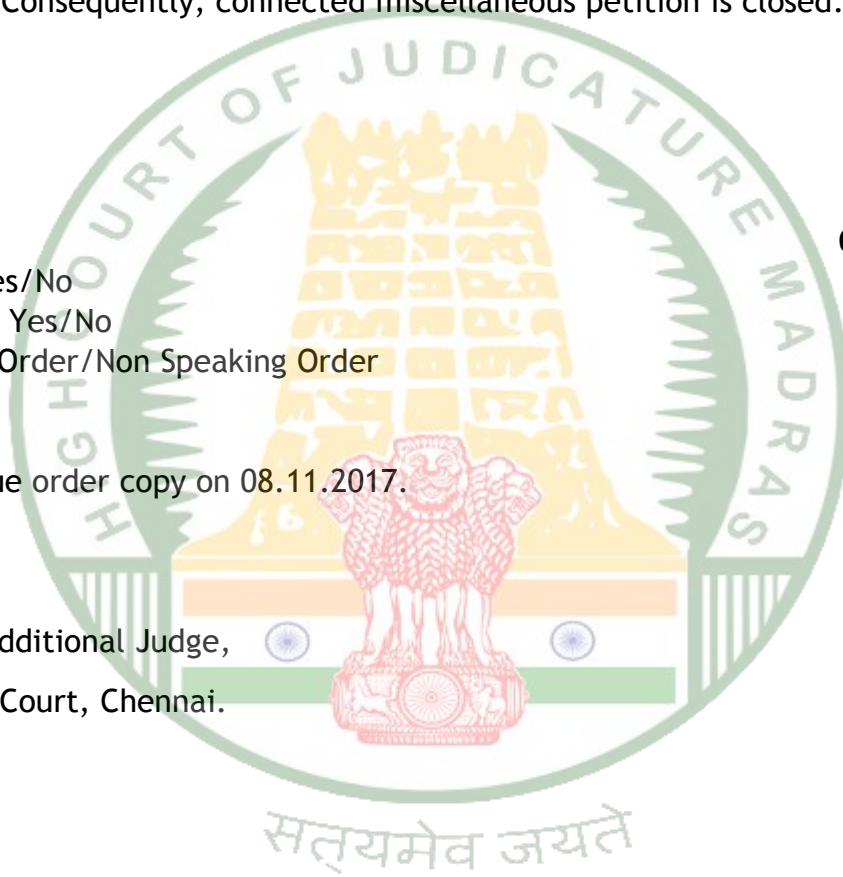
04.01.2018

Index: Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
kkd

Note: Issue order copy on 08.11.2017.

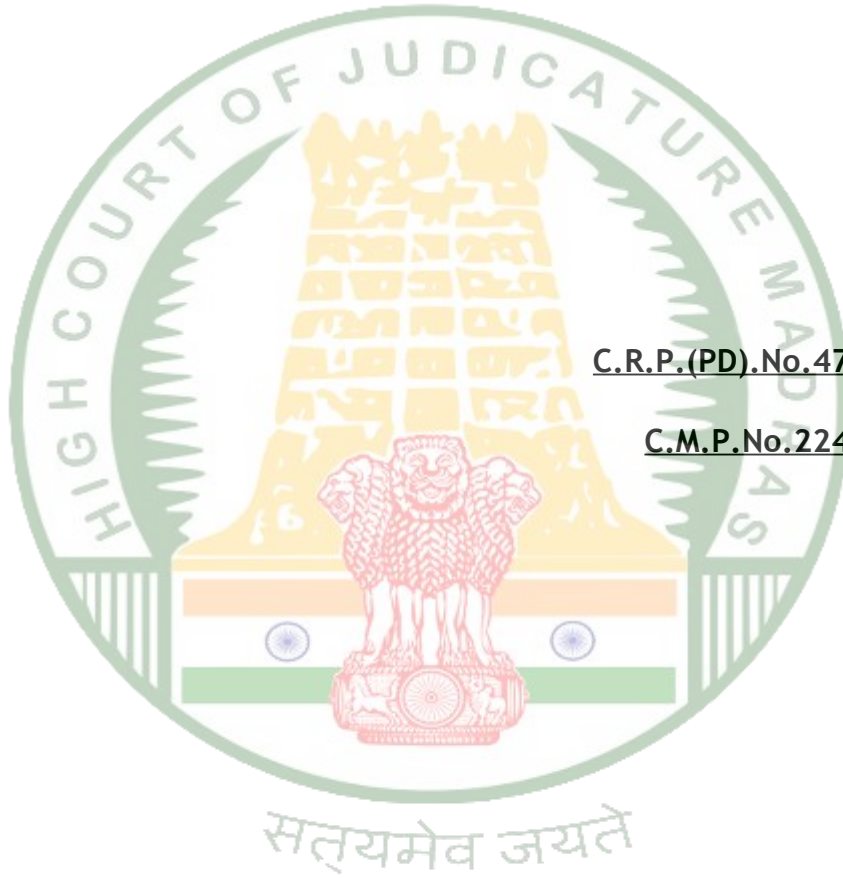
To

The XIX Additional Judge,
City Civil Court, Chennai.



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D.KRISHNAKUMAR,J
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