

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.299 of 2018 and C.M.P.No.1624 of 2018

Gems Packing
Rep. by Proprietor

... Petitioner/Tenant

Vs

Madras SPCA
Rep by its Secretary
T.Thyagarajan

... Respondent/Landlord

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 3.1.2018 made in E.A.SR.No.74706 of 2017 in E.P.No.116 of 2017 in R.C.O.P.No.629 of 2015 on the file of the XV Court of Small Causes (Rent Controller), Chennai.

For Petitioner : Mr.S.A.Hafiz
For Respondent : Mr.V.Manoharan

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ORDER

According to the petitioner, the petitioner/tenant has filed an application under Section 47 C.P.C. in E.A.SR No.74706 of 2017 in E.P.No.116 of 2017 R.C.O.P.No.629 of 2015 to declare that the decree, dated 21.3.2016

passed in R.C.O.P.No.629 of 2015 is null and void. The court below erroneously dismissed the application without even numbering the said application.

2 According to the learned counsel for the petitioner, the court below has not considered the contention of the petitioner. Further, the impugned order has been passed without even numbering the application and therefore, the order of the court below is liable to be set aside.

3 The learned counsel for the respondent would submit that the instant application is not maintainable before the court below and therefore, the court below has rightly dismissed the application.

4 In **G.V.VANITHA AND 5 OTHERS VS. K.DHANASEKARAN AND 3 OTHERS [2016(5) CTC 329]** this Court held as follows:

"It is a settled position that an application can be disposed of on merits only after numbering, unless the same is not maintainable. It is not the case of the petitioners that the application is not maintainable. When the application is maintainable, the Rent Controller should have numbered the application and disposed of the same after giving opportunities to both sides."

5 In the light of the judgment of this Court cited supra, this Court is inclined to pass the following order:

(i) The Order passed by the learned Rent Controller (XV Court of Small Causes), Chennai in E.A.SR.No.74706 of 2017 in E.P.No.116 of 2017 in R.C.O.P.No.629 of 2015 is set aside and the same is remanded to the court below to decide the same on merits, after numbering the application if it is in order.

(ii) On instructions, both side counsels have undertaken that they would cooperate before the court below for disposal of the said application within a time frame as may be fixed by this Court.

(iii) The learned Rent Controller (XV Court of Small Causes), Chennai is directed to dispose of the aforesaid application on merits within a period of eight weeks from the date of receipt of a copy of this order, after providing opportunities to the parties.

6 The Civil revision petition is disposed of with the above directions. No costs.

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1.02.2018

Index: Yes/No

Internet:Yes/No

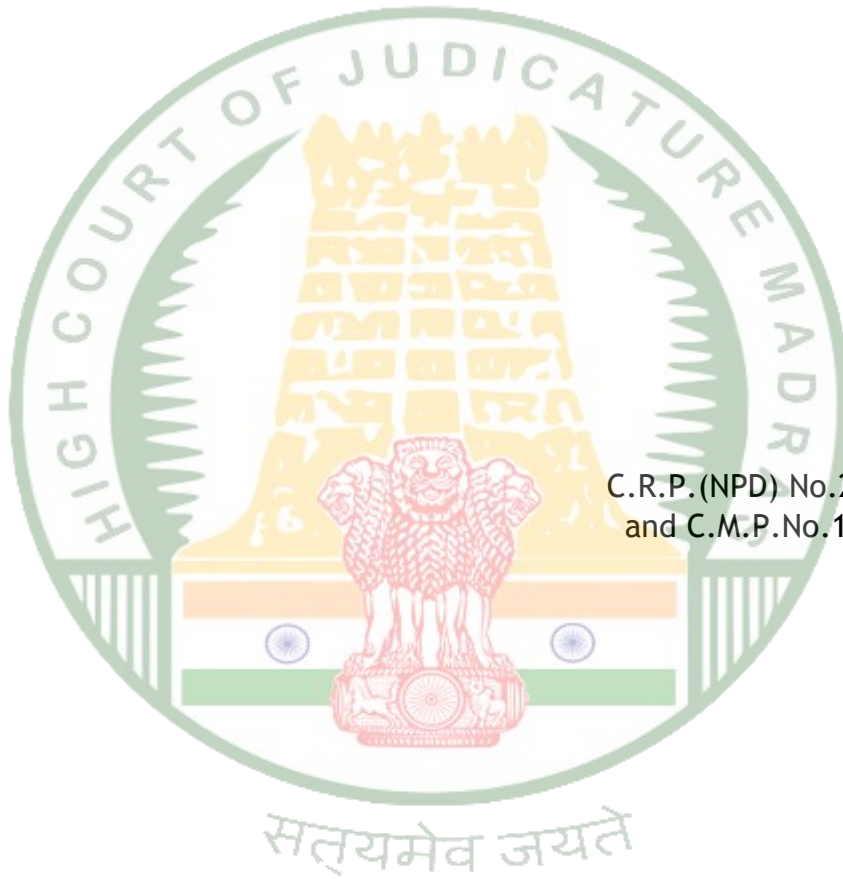
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Note: Issue order copy on 8.2.2018

D.KRISHNAKUMAR,J.

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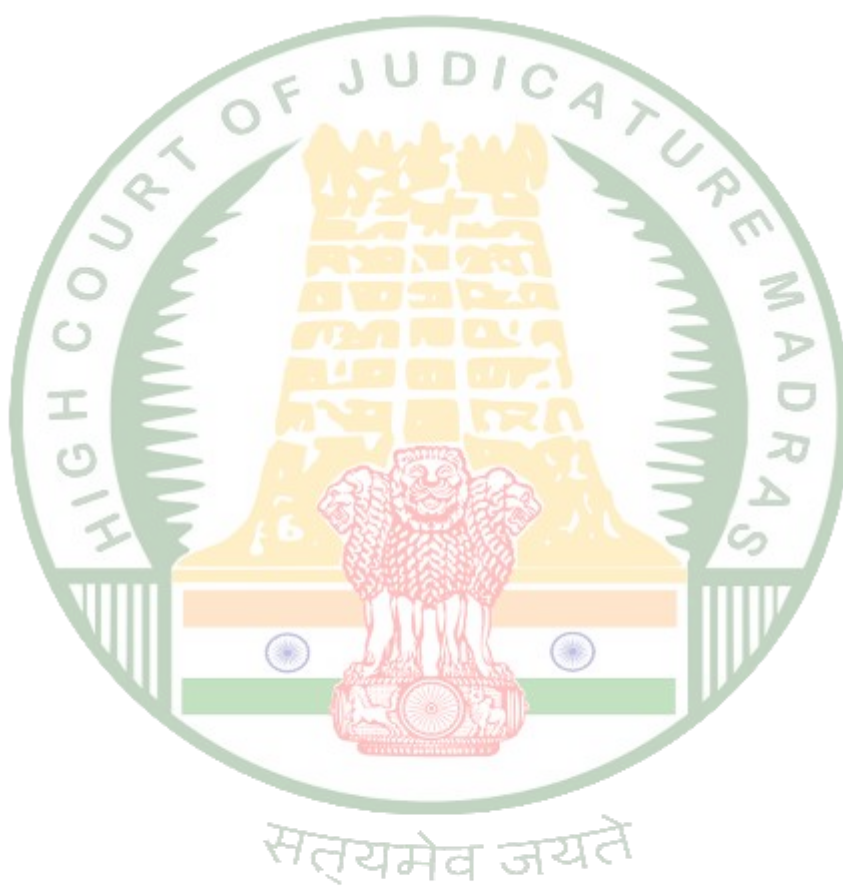
To
The XV Court of Small Causes, Chennai



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