

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).Nos.326 & 327 of 2018
and CMP.No.1806 of 2018

S.S.Jain Sangh (Mambalam)
Trust, represented by its
Managing Trustee,
No.46, Burkit Road,
T.Nagar, Chennai-17

.. Petitioner in both CRP's

Vs

Arulmigu Bashyakara Adhi Chenna
Kesava Perumal Temple,
Represented by its Executive Officer,
Office at Arulmighu Kothandaramar Temple,
K.R.Koil Street, West Mambalam,
Chennai-33

.. Respondent in both CRP's

COMMON PRAYER

Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 06.12.2017 in IA.Nos.15513 & 15514 of 2017 in OS.No.5759 of 2001 on the file of VI Assistant City Civil Court, Chennai and allow the above Civil Revision Petition.

For Petitioner : M/s.V.V.Sathya
in both CRP's

COMMON O R D E R

According to the revision petitioner, the respondent has filed a suit in OS.No.5759 of 2001 against the revision petitioner. In the aforesaid suit, the respondent has also filed applications in IA.Nos.15513 & 15514 of 2017 to recall and reopen PW2 and DW2 for the purpose of cross examination. According to the revision petitioner, the respondent has not turned up for cross-examination, after giving several adjournments, hence, evidence was closed on 06.07.2017. Thereafter, the revision petitioner has filed an application in IA.No.13131 of 2017 for receiving additional documents. Notice was served to the respondent and the application was adjourned for filing counter affidavit. As no counter affidavit was filed, the application was allowed on 11.09.2017. Thereafter, the case was posted for cross examination of DW1 on several dates, but the respondent did not appear before the court. Hence, the cross examination of DW1 was closed and posted for arguments on 02.11.2017. On that day the counsel of the revision petitioner appeared, but the respondent counsel did not appear before the court below. Finally the case was posted on 20.11.2017. On that day, only the counsel for the revision petitioner was present and argued. At the time, the respondent has filed the

above applications to reopen and recall PW2 and DW2. Therefore, sufficient opportunity was granted to the respondent. But at the fag end of the arguments, the court below has erroneously allowed the said applications.

2. Heard the learned counsel for the revision petitioner and perused the materials available on record.

3. The respondent has filed the affidavit by stating that he became unwell and could not appear before the court and even after recovered from illness, there was a series of meetings at the Office of the Commissioner, HR &CE Department on various subjects relating to the Temple and subsequently, he was sent for further training by the Department and so he could not contact the advocate. Therefore, after came to know that the evidence was closed, both the applications were filed. By accepting the said reasons, the court below has allowed the applications and passed the orders saying that an opportunity shall be granted to the respondent to contest the case and allowed the said applications on payment of cost of Rs.300/- to the revision petitioner. In the light of the decision of the Hon'ble Supreme Court in the case of *Vadiraj Naggappa Vernekar (d) Through Lrs Vs. Sharad Chand*

Prabhakar Gogate reported in **2009 (5) LW 52**, wherein in paragraph 16, it has been held that *though the provisions of Order 18 Rule 17 CPC have been interpreted to include application to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. But the present case is concerned, the respondent has not turned up for cross examination of DW2 for the aforesaid reasons. Therefore, in the light of the aforesaid Judgment of the Hon'ble Supreme Court, wherein it has been stated that if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter.* Therefore, when the court below considered the reasons stated in the affidavit that the respondent has not cross examined DW2, by providing an opportunity, the said application was allowed by the court below. There is no error or illegality in the order passed by the court below and the Civil Revision Petition is liable to be dismissed.

4. In the result, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

30.01.2018

Speaking/Non-Speaking order

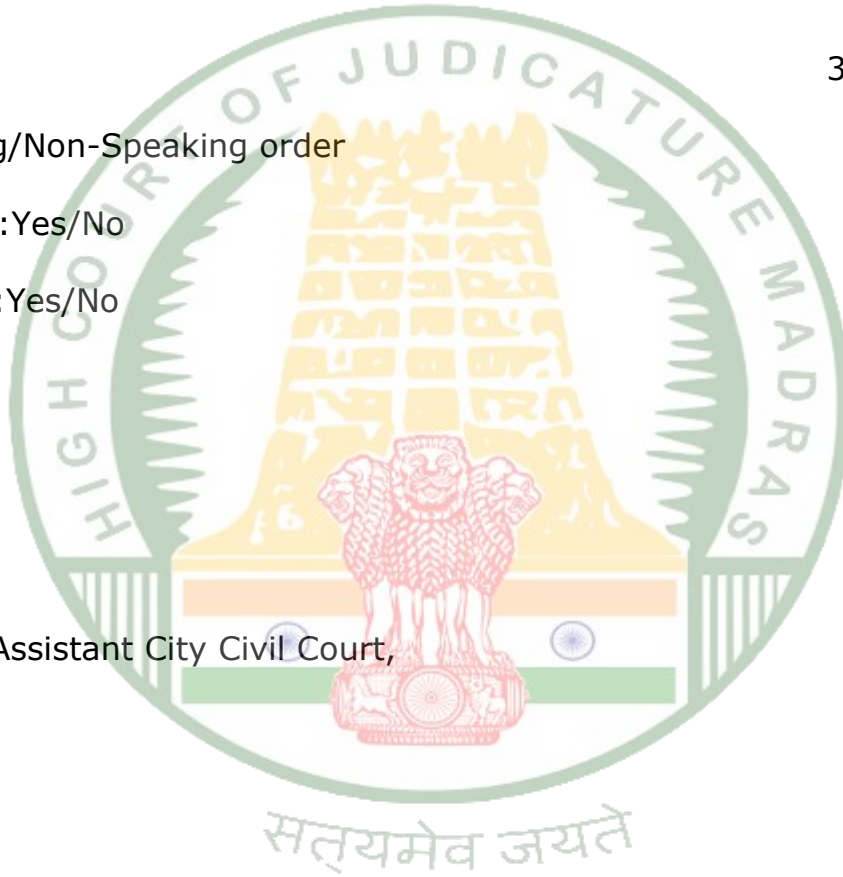
Index :Yes/No

Internet:Yes/No

lok

To

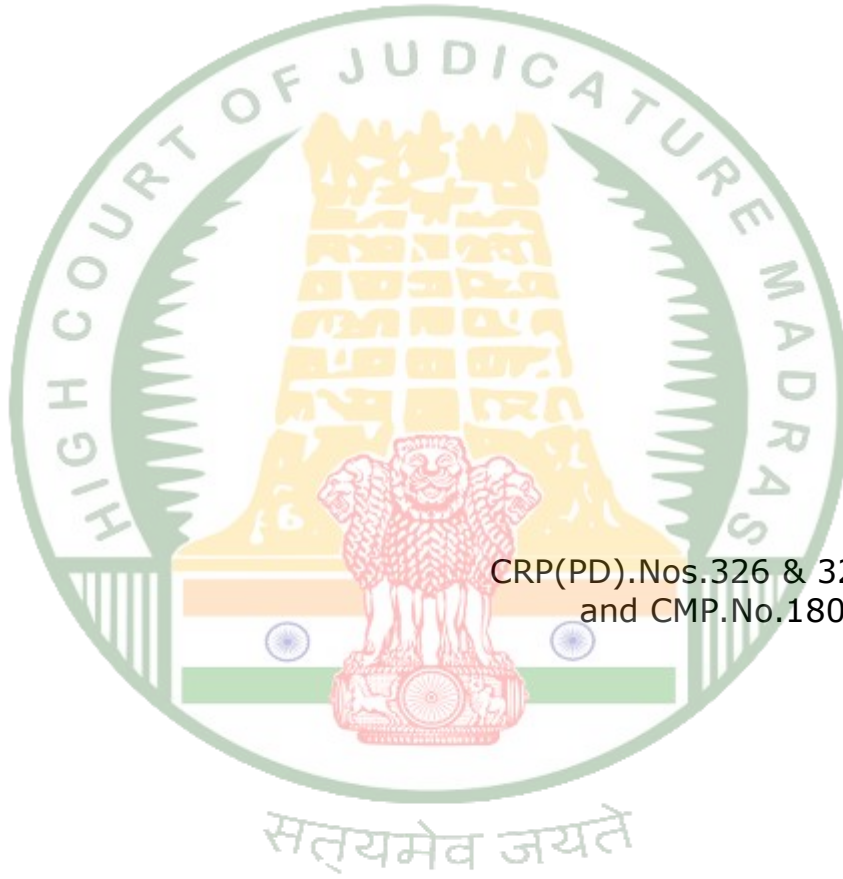
The VI Assistant City Civil Court,
Chennai



WEB COPY

D. KRISHNAKUMAR J.,

lok



CRP(PD).Nos.326 & 327 of 2018
and CMP.No.1806 of 2018

WEB COPY

30.01.2018