

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.560 of 2018
and C.M.P.No.2998 of 2018

L.M.D.Athiya Praveen .. Petitioner

vs

1.N.B.Riyas Ahmed

2.C.Fazal Khaan

3.L.U.Mohammed Ali Khan Saheb

4.L.M.D.Shujhath Ali Khan

5.I.Mazar Hussain

6.R.Iqbal

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in (unnumbered) I.A.No.Nil of 2017 in O.S.No.95 of 2016, dated 27.11.2017 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore pending before the learned Subordinate Judge, Attur.

For Petitioner

... Mr.T.Dharani

For respondents

... Mr.B.Gurunathan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decreetal order dated 27.11.2017 in I.A.No.Nil of 2017 in O.S.No.95 of 2016, passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore.

2.The learned counsel for the petitioner submitted that the respondents 1 and 2/plaintiffs filed a suit in O.S.No.95 of 2016 for damages on the file of the learned District Judge, Vellore. Thereafter, the petitioner and respondents 3 and 4 filed an application in (unnumbered) I.A.No.Nil of 2017 in O.S.No.95 of 2016 under Order 6 Rule 16 and Section 151 of C.P.C to strike off the plaint filed in O.S.No.95 of 2016 before the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore and the Court below rejected the said application on account of sans of prima facie. Hence, the petitioner filed the present Civil Revision Petition before this Court.

3.The learned counsel for the respondents submitted that the Court below rightly dismissed the (unnumbered) I.A.No.Nil of 2017 in O.S.No.95 of 2016. Therefore, the Civil Revision Petition is liable to be

dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

5. The decision of this Court in **K.Venkatesan & Others vs. E.Hemantharaj (CDJ 2016 MHC 5629)** squarely applies to the facts of the case.

6. Considering the facts and circumstances of the case, the submissions of the learned counsel for both sides and in the light of the decision cited supra, this Court is of the view that the Court below without giving opportunity to the respondents dismissed the application and therefore, this Court has no hesitation to set aside the impugned order passed by the Court below and inclined to pass the following order:

"(i) The order dated 27.11.2017 passed in I.A.No.Nil of 2017 in O.S.No.95 of 2016 is set aside and the matter is remanded to the Court below to decide afresh, after numbering

the interlocutory application, if it is in order.

(ii) The learned trial Judge is directed to pass the order on merits and in accordance with law after affording opportunity for both sides.

(iii) The Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed. "

19.02.2018

Speaking/Non speaking order.

Index: Yes/No.

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To

The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court),
Vellore.

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D.KRISHNAKUMAR,J.

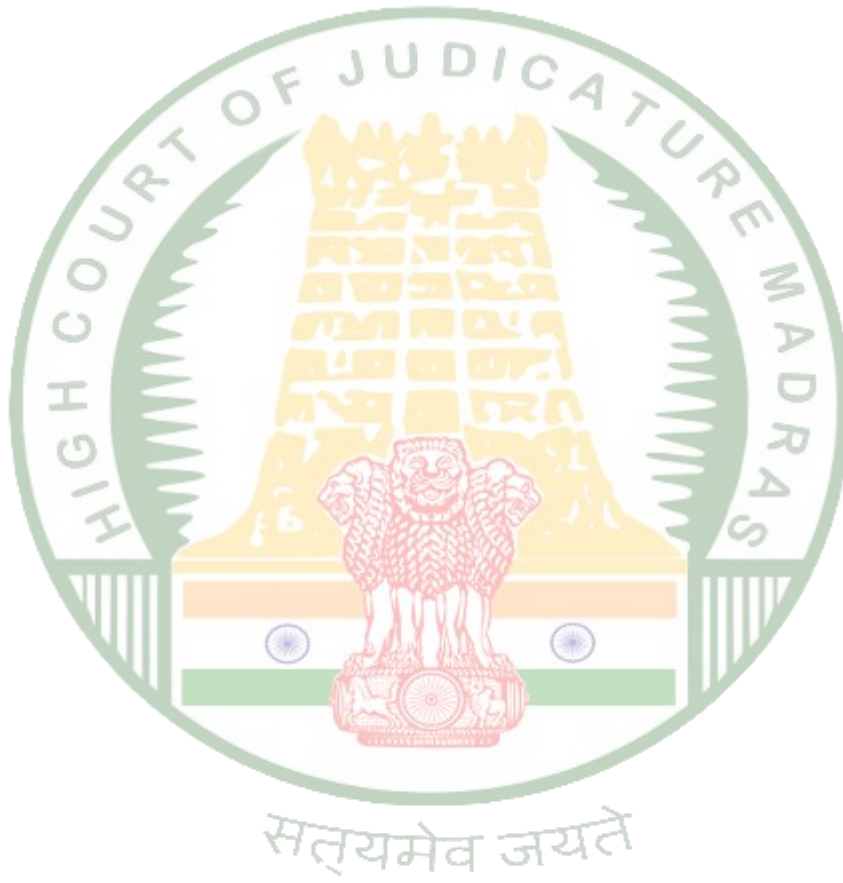
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C.R.P.(PD)No.560 of 2018

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Date: 19.02.2018



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