

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

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

CRP(NPD).No.469 of 2016
and CMP.No.11116 of 2017

N.Selvaraj

.. Petitioner

Vs

E.Mohanraj

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 24.11.2015 passed by the XI Small Causes Court, Chennai in EP.No.204 of 2015 in RCOP.No.1472 of 1996.

For Petitioner : Mr.Jesus Moris Ravi

For Respondent : Mr.M.Santhanamari
for Mr.E.J.Ayyappan

ORDER

According to the revision petitioner, the revision petitioner has filed an appeal in RCA.No.1092 of 1997 in RCOP.No.1472 of 1996 before the VII Small Causes Court, Chennai and the appeal was dismissed. Against which, the revision petitioner preferred a Civil

Revision Petition in CRP.NPD.No.182 of 2006 and in the aforesaid Civil Revision Petition, this Court has passed an order recording the memorandum of compromise entered between the parties. The said compromise memo was formed part of the order in the aforesaid Civil Revision Petition, wherein, the revision petitioner was granted a month's time to vacate and hand over the possession of 130 square feet as per the compromise memo. The revision petitioner fulfilled the above conditions. But the respondent has not given the possession of the 130 square feet. Hence, the revision petitioner has initiated contempt proceedings against the respondent in Cont.No.638 of 2007, wherein this Court imposed a fine of Rs.2,000/- along with a simple imprisonment for three months. Against the aforesaid order passed in the contempt petition. Appeal has been filed, which was dismissed for default. Thereafter, the revision petitioner has filed the present application in EP.No.204 of 2015 to deliver the possession of 130 square feet of the schedule mentioned property after duly evicting the respondent from the property under Order 21 Rule 25 of the Civil Procedure Code. According to the revision petitioner, the court below has considered the said application and dismissed by holding that the revision petitioner has mentioned wrong provisions of law and also without taking steps for demarcating the portion, filing the present

application for delivery of possession cannot be entertained. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

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

3. In the present Civil Revision Petition also the revision petitioner has prayed for the same relief as sought for in the instant application without challenging the Order dated 24.11.2015. Further, the learned counsel for the respondent has vehemently opposed that the revision petition is not at all maintainable and therefore, the Civil Revision Petition is liable to be dismissed.

4. The court below has dismissed the instant application on the ground that the revision petitioner has not taken steps for demarcating the portion to seek for delivery of possession. Without challenging the findings of the court below seeking for very same prayer in the Civil Revision Petition under Article 227 of the Constitution of India is not maintainable and the same is liable to be

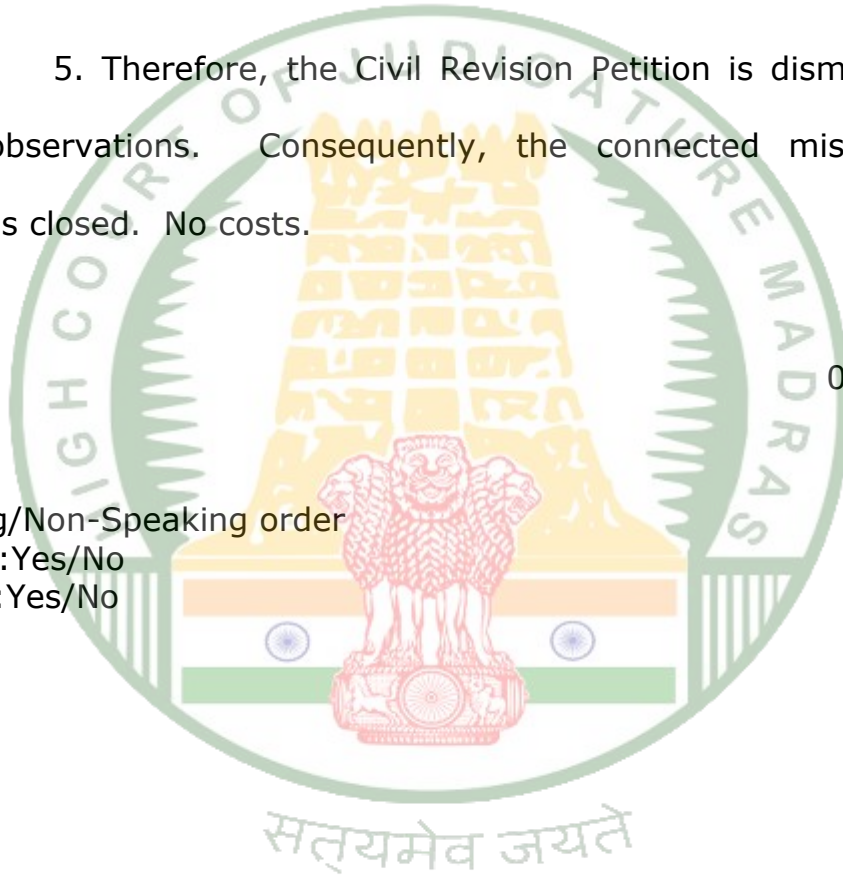
dismissed. However, it is open to the revision petitioner to file an appropriate application before the court below for claiming the relief as observed in EP.No.204 of 2015. If any such application is filed, it is open to the respondent to raise his objection.

5. Therefore, the Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

06.02.2018

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Speaking/Non-Speaking order
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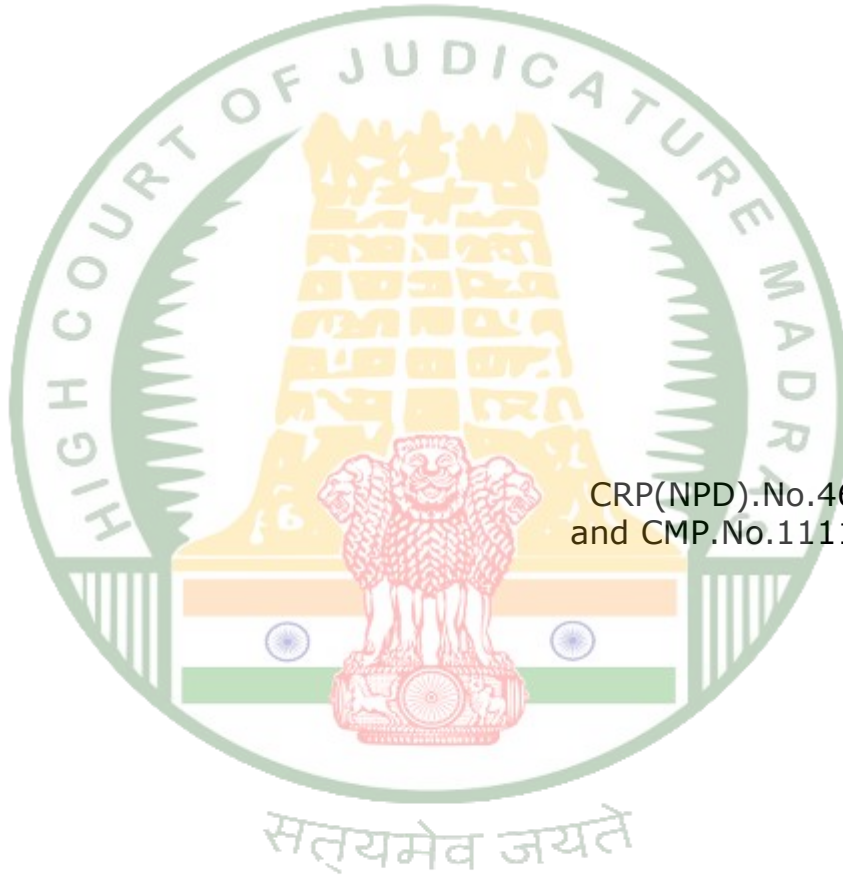
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Chennai



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D. KRISHNAKUMAR J.,

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