

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.665 of 2018
and CMP.No.3433 of 2018

V.Raja

.. Petitioner

Vs

Thamaraivathani

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India challenging the fair and decreetal order in IA.No.32 of 2017 in AS.No.13 of 2016 on the file of the III Additional District Court, Vellore at Thirupattur dated 20.12.2017.

For Petitioner

: Mr.V.Lakshminarayanan

For Respondent

: Mr.C.K.M.Appaji

ORDER

According to the revision petitioner, the revision petitioner has filed a suit for specific performance against the respondent herein in

OS.No.75 of 2010 on the file of the Subordinate Judge, Vellore. The respondent has filed written statement. The said suit was dismissed on 01.06.2016. Challenging the aforesaid Judgment and Decree, the revision petitioner has preferred an appeal in AS.No.13 of 2016 on the file of the III Additional District Judge, Vellore. The revision petitioner has also filed an application in IA.No.32 of 2017 to amend the averments of the plaint by inserting paragraph 4 (a) to state that the revision petitioner was always ready and willing to pay the balance. The said application was dismissed by the court below. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner has brought to notice of this Court by relying upon the paragraphs 3 and 4 of the averments in the plaint, where he has stated 'readiness and willingness to perform the contract'. The revision petitioner has also raised the same in the memorandum of grounds in the appeal. Further, no prejudice would be caused to the respondent, if the said application is allowed. Therefore, the order of the court below is liable to be set aside.

3. The learned counsel for the respondent would submit that the court below has dismissed the said application by holding that the revision petitioner has filed the instant application at the appellate stage only to fill up the lacuna and it could not be entertained. The learned counsel for the respondent would submit that the revision petitioner can very well agitate the matter in the appeal suit on the basis of averments in the plaint as well as the memorandum of grounds raised in the appeal. Therefore, the Civil Revision Petition is liable to be dismissed.

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

5. On perusing the records, it is an admitted fact that the instant application has been dismissed by the court below, by holding, that the aforesaid application is not maintainable at the appellate stage. It is the contentions of the revision petitioner that a statement regarding 'readiness and willingness' has already been given in the averments of the plaint as well as the memorandum of grounds raised in the appeal. However, it is open to the parties concerned to agitate the issued

involved in the Civil Revision Petition regarding 'readiness and willingness' before the Appellate court, on the basis of averments in the plaint as well as the 'memorandum of grounds' raised in the appeal. Hence, there is no warrant to interfere with the order passed by the court below and the Civil Revision Petition is liable to be dismissed.

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

28.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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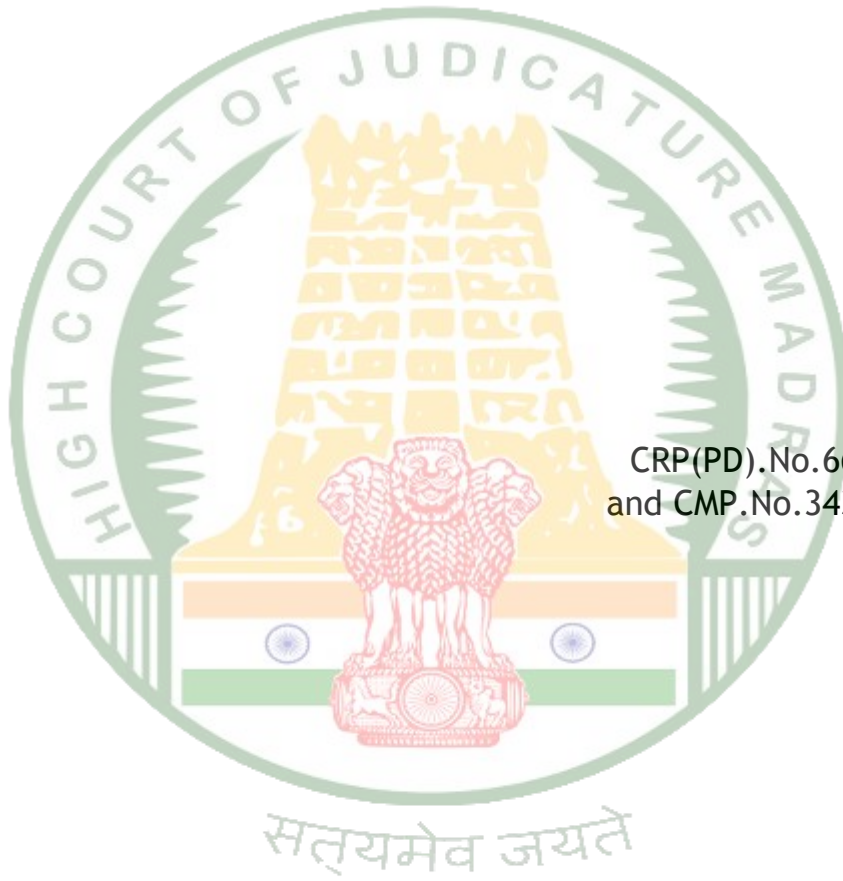
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Vellore at Thirupattur



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D. KRISHNAKUMAR J.,

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