

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.875 of 2015

1.Gopal Pillai
2.Lakshmi

.. Petitioners

Vs.

J.M.Muralidharan

Represented by his power agents

(1) Narayanan
(2) N.Jagadesan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 09.01.2015 passed in Memo dated 20.11.2014 in O.S.No.227 of 2014 on the file of the Subordinate Court, Tambaram.

For Petitioners : Mr.K.M.Anand

For Respondents : Dr.R.Sampath Kumar

ORDER

The Civil Revision Petition is filed against the order dated 09.01.2015 passed in Memo dated 20.11.2014 in O.S.No.227 of 2014 on the file of the Subordinate Court, Tambaram.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.227 of 2014 on the file of the Subordinate Court, Tambaram. The respondent filed said suit for declaration and injunction. Pending suit, respondent filed I.A.No.884 of 2014 for interim injunction and an ex parte order of interim injunction was granted. The petitioner filed an application for rejection of plaint as well as memo to suspend the order of interim injunction on the ground that the respondent has not complied with the provisions of Order 39 Rule 3(a) C.P.C., the respondent sent only copy of the plaint and did not send other documents and even though in the covering letter, the respondent has mentioned that he sent 10 documents, except copy of the plaint, no other documents were sent by the respondent.

3. The respondent filed counter to the memo as well as application for rejection of plaint. In the counter, respondent stated

that all the documents were sent to the petitioner and he has complied with the provisions of Order 39 Rule 3(a) C.P.C.

4. The learned Judge, considering the memo and counter filed by the respondent, rejected the memo on the ground that based on the rival contentions alone, it cannot be decided that whether all the documents were sent or not and on that basis, interim order cannot be suspended.

5. Against the said order dated 09.01.2015 made in memo dated 20.11.2014 in O.S.No.227 of 2014, the present Civil Revision Petition is filed by the petitioner.

6. The learned counsel for the petitioner contended that in the receipt of Registered Post with Acknowledgement Due, it is seen that weight of the post is only 30 grams. This clearly proved that the respondent has not sent all the documents. This contention is on the basis of assumption and presumption or surmises. The learned counsel for the respondent sent the documents with covering letter. In the said covering letter, the learned counsel for the respondent has mentioned 10 documents. The petitioner is denying that counsel

for the respondent did not send those documents and sought for suspension of ex parte injunction granted for non compliance of the provisions of Order 39 Rule 3(a) C.P.C. Whether the respondent has complied with the provisions of Order 39 Rule 3(a) C.P.C. or not cannot be decided based on the claim of the petitioner in the memo or statement of the respondent in the counter affidavit. Both the parties must substantiate their claim by letting in acceptable evidence before the learned Judge. Further, the petitioner has filed application for rejection of plaint.

7. The learned Judge considered all the above facts in proper perspective and rightly rejected the memo. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 09.01.2015.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.01.2018

Index : Yes/No

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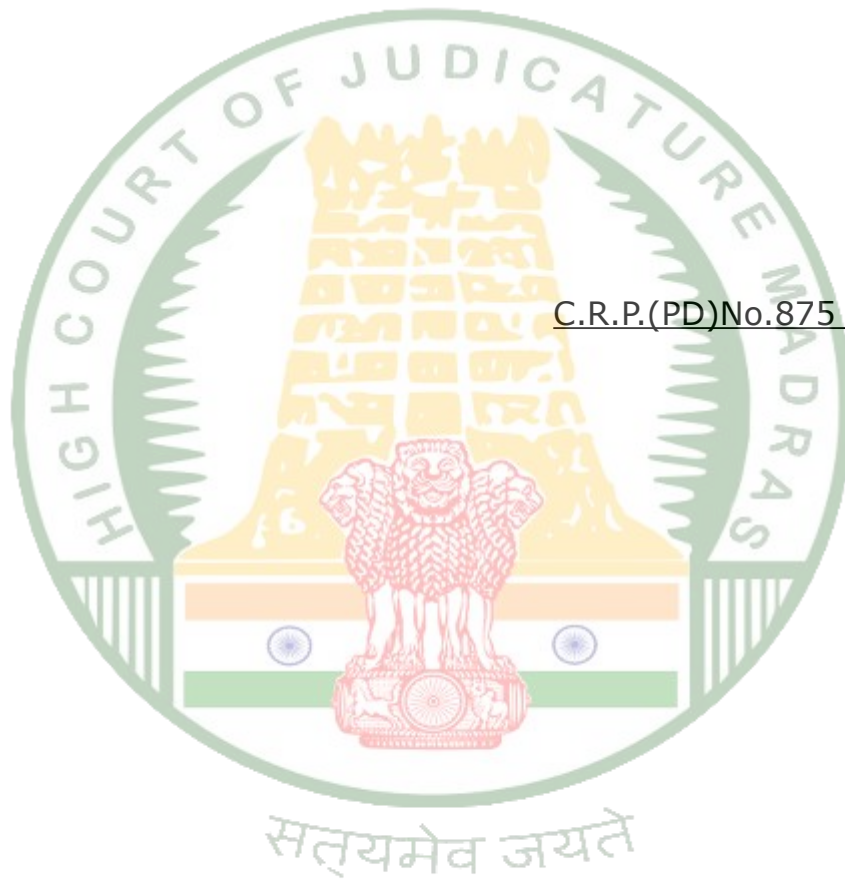
The Subordinate Judge, Tambaram.



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V.M.VELUMANI, J.

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