

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.902 of 2018
and CMP.No.4901 of 2018

1.C.Suseela
2.C.Damodaran
3.C.Sampathkumar
4.P.Chandrasekar

.. Petitioners

Vs

S.Sambandam

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 01.03.2018 made in IA.No.151 of 2018 in OS.No.941 of 2015 on the file of the Principal District Munsif, Alandur.

For Petitioners

: Mr.S.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan

For Respondent

: Mr.S.Thangavel

ORDER

According to the learned senior counsel appearing for the learned counsel for the revision petitioners, the revision petitioners have

filed an application in IA.No.151 of 2018 in OS.No.941 of 2015 on the file of the District Munsif, Chengalpet to reject the plaint in the aforesaid suit. According to the petitioner herein, the respondent has filed an application in IA.No.947 of 2017, which was dismissed, challenging the aforesaid order, the Civil Revision Petition in CRP.No.4397 of 2017 was filed, which was allowed by this Court, by permitting the respondent to carry out the amendment in the plaint. In the mean time, the revision petitioner has filed an application under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint pursuant to the order passed by this Court on 09.02.2018 in CRP.No.515 of 2018. At the time of filing the application, the respondent has not carried out the amendment in the plaint. Hence, the respondent filed a petition in CMP.No.3347 of 2018 in CRP.No.4397 of 2017, wherein this Court has extended the time by one week to carryout the necessary amendment in the plaint. According to the learned senior counsel for the revision petitioners, pursuant to the amendment application was allowed, the revision petitioners have filed the instant application by stating that there is no cause of action and therefore, the aforesaid plaint is to be rejected under Order 7 Rule 11 of the Civil Procedure Code. The petitioner has satisfied the ingredients of the provisions under the

aforesaid provisions. Without considering the contentions of the revision petitioners, the court below has dismissed the said application by stating that the same can be decided at the time of trial in the suit.

2. The learned counsel for the respondent would submit that it is true, pursuant to the order dated 22.02.2018, the amendment was carried out before the trial court. The revision petitioners have filed the instant application, prior to carry out the amendment, in IA.No.947 of 2017. At the pre-amended stage in the plaint, the application filed by the petitioner would attracts res-judicata as rightly decided by the court below. Therefore, the application itself is not maintainable before the court below. Pursuant to the order of this Court, the respondent has filed amendment application within the time in IA.No.245 of 2018 for amendment of plaint and the same is pending. Therefore, the court below has rightly dismissed the aforesaid application. Hence, the Civil Revision Petition is liable to be dismissed.

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3. Heard, the learned senior counsel for the revision petitioners and the learned counsel for the respondent and perused the materials available on record.

4. By considering the elaborate submissions of both parties, in the interest of justice, both the counsel agree to pass the following orders:

(i) In view of the reasons stated above, both the parties agreed that the application filed by the revision petitioners is not maintainable at the stage of preamended plaint.

(ii) The revision petitioners are permitted to file counter affidavit, in IA.No.245 of 2018, if so desires, within one week from the date of receipt of a copy of this Order. Thereafter, the trial court is directed to dispose of the amendment application within a period of two weeks.

(iii) It is open to the revision petitioners to file appropriate application to reject the plaint or to raise maintainability of the suit, within two weeks, if no appeal is preferred by parties against the order passed in the amendment application.

(iv) Earlier order dated 09.02.2018 passed by this Court is modified and directed the court below to dispose of the application as

expeditiously as possible, if there is no legal impediment.

(v) The observations made in the present order will not influence the court below at the time of deciding the above application.

5. The Civil Revision Petition is disposed of with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

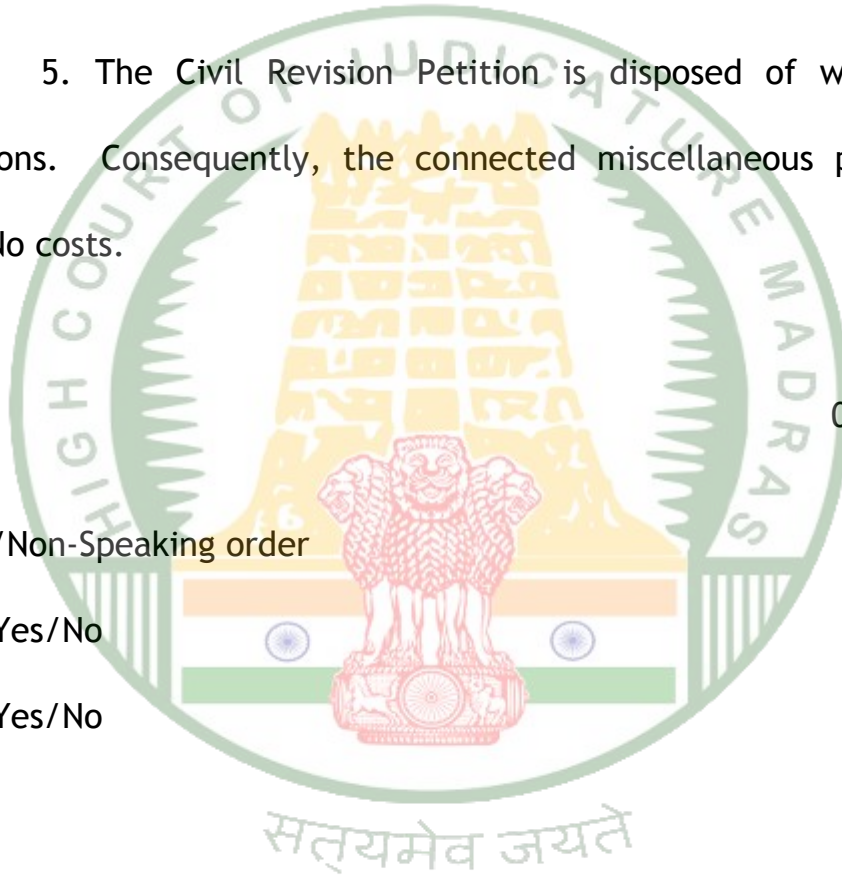
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Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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D. KRISHNAKUMAR J.,

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To

The Principal District Munsif,
Alandur.



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