

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2018

CORAM

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

CIVIL REVISION PETITION (PD) No.3410 of 2016
and
C.M.P.No.17358 of 2016

Muthuvel .. Petitioner

vs

Nagappan .. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 08.09.2016 passed in I.A.No.293 of 2016 in O.S.No.97 of 2009 on the file of the District Munsif, Palacode.

For Petitioner ... Mr.R.Poornima

For Respondent ... No Appearance

ORDER

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The Civil Revision Petition has been filed against the order and decretal order dated 08.09.2016 passed in I.A.No.293 of 2016 in O.S.No.97 of 2009 on the file of the District Munsif, Palacode.

2. According to the petitioner/plaintiff, he filed a suit in O.S.No.97 of 2009 against the respondent/defendant for declaration and recovery of possession. In the aforesaid suit, the petitioner filed an application in I.A.No.355 of 2009 to appoint an Advocate Commissioner to inspect the suit property and submit a report before the Court below. The said application was allowed by appointing one Mr.Saravanan, Advocate, as an Advocate Commissioner and directed the petitioner to pay a sum of Rs.3,000/- towards remuneration. Subsequently, the aforesaid application was dismissed for non payment of the remuneration to the Advocate Commissioner on 06.04.2015. Hence the petitioner, filed the present application in I.A.No.293 of 2016 in I.A.No.355 of 2009 under Section under Order 9 Rule 9 and Section 151 of CPC to set aside the order dated 06.04.2015 passed in I.A.No.355 of 2009. The Court below dismissed the said application by order dated 08.09.2016 holding that the reasons stated in the affidavit could not be believed and the same has been filed for the purpose of dragging the proceedings in the suit. Aggrieved by the said order, the Civil Revision Petition has been filed by the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner, being the plaintiff, filed I.A.No.355 of 2009 for appointment of Advocate Commissioner, not with an intention to delay the proceedings. The learned counsel further submitted that earlier Mr.Saravanan was appointed as Advocate Commissioner and as he failed to file the report before the Court. Subsequently, Mr.Pachahhari, was appointed as Advocate Commissioner by the Court below. Since the petitioner has changed his counsel, the above facts have not been communicated to the petitioner. Hence, the petitioner could not pay the remuneration to the Advocate Commissioner. If I.A.No.293 of 2016 is not allowed, it will cause prejudice to the right of the petitioner and the delay caused in filing the said application is neither wilful nor wanton. But, the Court below without considering the said facts, erroneously, dismissed the present application. Therefore, the impugned order passed by the Court below is liable to be set aside and the Civil Revision Petition has to be allowed.

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

5. Though opportunity has been granted to the respondent, the respondent has not chosen to appear before this Court either in person or through the counsel. Hence, this Court is inclined to dispose of the case on merits.

6. It is the specific case of the petitioner that the learned counsel, who appeared for the petitioner before the trial Court, has not communicated the remuneration to be paid to the Advocate Commissioner and therefore, the non payment of the remuneration is neither wilful nor wanton but, only due to bona-fide reasons.

7. Considering the above facts and circumstances of the case, submission made by the learned counsel for the petitioner and to minimise the delay in the proceedings of the said suit as the report has been filed by the Advocate Commissioner, time may be granted to the petitioner by imposing cost to pay the remuneration to the Advocate Commissioner. Accordingly, this Court is inclined to pass the following order:

"(i) The order dated 08.09.2016 passed in I.A.No.293 of 2016 in I.A.No.355 of 2009 in O.S.No.97 of 2009 by the learned District Munsif, palacode is set aside.

(ii)The petitioner is directed to deposit a sum of Rs.3,000/- (Rupees Three Thousand only) as costs to the Tamil Nadu Mediation and Conciliation Centre, Dharmapuri and he is further directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the Advocate Commissioner towards remuneration within a period of two weeks from the date of receipt of a copy of this order.

(iii)The learned District Munsif, Palacode is directed to consider and dispose of I.A.No.355 of 2009 in O.S.No.97 of 2009 on merits and in accordance with law as expeditiously as possible."

The Civil Revision Petition stands allowed on the above terms. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

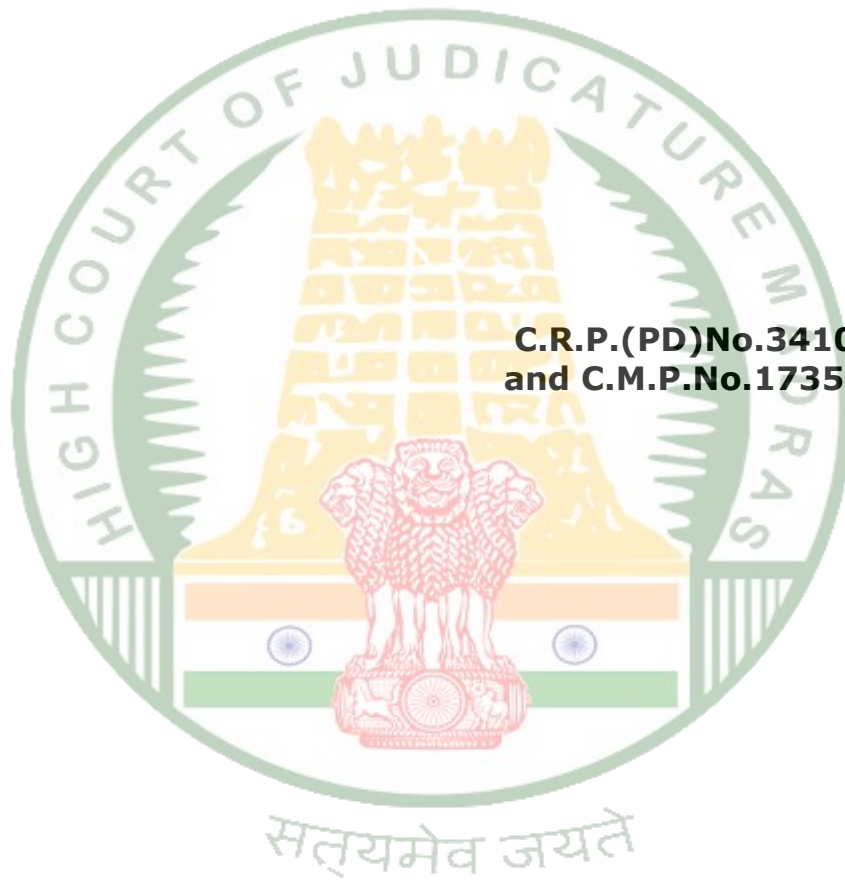
22.03.2018

Index: Yes/No.
Speaking/Non-speaking Order
cla

To
The District Munsif,
Palacode.

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D.KRISHNAKUMAR,J.
cla



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