

IN THE HIGH COURT OF JUDICATURE AT MADRAS

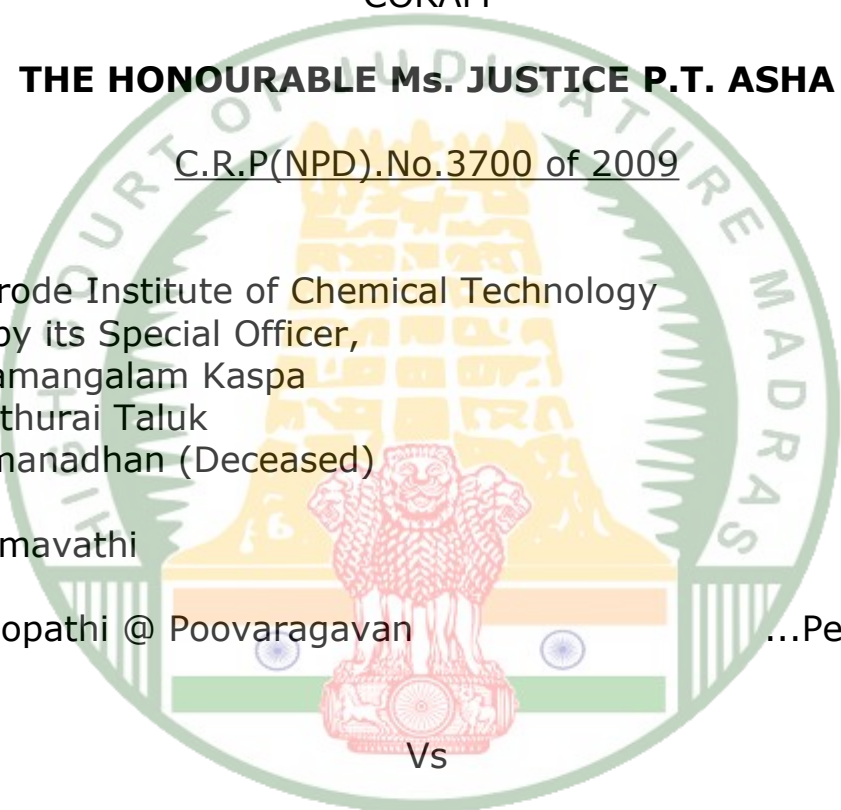
Reserved on : 01.10.2018

Delivered on : 11.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.3700 of 2009

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1. The Erode Institute of Chemical Technology
Rep. by its Special Officer,
Vijayamangalam Kaspas
Perunthurai Taluk
N.Ramanadhan (Deceased)
2. R.Padmavathi
3. R.Bhoopathi @ Poovaragavan ...Petitioners
- Vs
- Lakshmi Bai ...Respondent
- सत्यमेव जयते

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order of the learned I Additional Subordinate Judge, Erode, dated 07.09.2009 in E.P.No.13 of 2006 in O.S.No.293 of 1986.

For Petitioners : Mr.P.Valliappan

For Respondent : Ms.Shyamala
for Ms.Usha Tholgoppian

ORDER

This Civil Revision Petition is filed against the order dated 07.09.2009 of the learned I Additional Subordinate Judge, Erode in E.P.No.13 of 2006 in O.S.No.293 of 1986.

The facts in brief are as follows:

2. The defendant/Judgment Debtor as revision petitioner had filed O.S.No.293 of 1986 on the file of the learned Subordinate Judge, Erode for recovery of sum of Rs.64,500/- with interest from the date of suit till the date of realisation and to direct the defendant to pay compensation for the use and occupation of the suit building at rate of R.4,000/- per month and to put the plaintiff in possession of the suit building after removing the shed put up by them in the lawn and garden

portion. The suit was decreed on 06.10.1989 and the learned Subordinate Judge had passed the following decree:

a) that the defendants shall pay a sum of Rs.64,000/- towards lease arrears and Rs.500/- for damages to the plaintiff.

b) that the defendants shall hand over the vacant possession to the plaintiff.

c) that the defendants shall pay a sum of Rs.4,000/- per month to the plaintiff from 01.08.1986 till date of handing over vacant possession.

d) that the defendants shall pay a cost of Rs. 11,217.75p to the plaintiff.

3. The said Judgement and Decree was taken up on Appeal by the revision petitioner herein. While granting stay, this Court by an order dated 20.03.1999 had directed the revision petitioner to pay two-thirds of the decreed amount including interest within three months from the date of order and to continue to pay a

sum of Rs.4,000/- per month till the disposal of the first appeal. Thereafter, by an order dated 03.08.1990, this Court was pleased to extend the time granted to deposit the two-third decreed amount together with interest at the rate of 9% per annum pending the first appeal. The respondent herein had filed E.P.No.13 of 2006 for recovery of a sum of Rs.3,54,669/- which included the interest component. Ultimately by an order dated 24.03.2009, the appeal filed by the revision petitioners was dismissed and the Judgement and Decree of the learned Subordinate Judge, Erode in O.S.No.293 of 1986 was confirmed.

4.The revision petitioner had contested the Execution Petition on two grounds:

- a) that the execution proceedings was time barred; and
- b) that the decree did not grant any interest and therefore the claim of interest has to be dismissed.

However, the learned I Additional Subordinate Judge, Erode, by the impugned order allowed the Execution Petition as prayed for.

Challenging the said order, the revision petitioners are before this court.

5. Heard Mr.P.valliappan, learned counsel for the revision petitioners and Ms.Shyamala, learned counsel for Ms. Usha Tholgappian for the respondent.

6. Mr.P.Valliappan, learned counsel would argue that the decree dated 06.10.1998 in O.S.No.293 of 1986 of the Sub Court, Erode was very silent about the grant of interest, though, the same had been claimed by the plaintiff. He would contend that this Judgement and Decree, was confirmed by this Honourable Court in its Judgement and Decree dated 24.03.2009 in A.S.No.1203 of 1989. Therefore, he contended that the executing Court was wrong in granting interest. He would also argue that the execution proceedings was barred by limitation since the decree was passed on 06.10.1989 whereas, the execution proceedings has been initiated only in the year 2006.

7. Ms. Shyamala, learned counsel on the other hand would argue that the revision petitioner had themselves agreed to pay interest which is evident from the order of this Court in C.M.P.No.9046 & 9047 of 1990 in A.S.No.1203 of 1989 dated 03.08.1990. She would further argue that the execution proceedings is well within the period of limitation since the first appeal had been disposed of only in the year 2009.

8. Heard the submissions of either parties. As regards the plea of limitation, it is evident from the records that the revision petitioners had challenged the decree in O.S.No.293 of 1986 in A.S.No.1203 of 1989 and the appeal has been disposed of only in the year 2009. Therefore, the execution proceedings initiated in the year 2006 is well within time.

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9. As regards the second argument with reference to the interest, it is clear from reading of the decree in O.S.No.293 of

1986 on the file of the Sub Court, Erode, that though the respondents had asked for interest in the suit the same had not been granted and it was only the Principal amount that was decreed. This Judgement and Decree has been confirmed by this Court in A.S.No.1203 of 1989 .

10. The interest which is paid while obtaining the stay of the operation of the decree in O.S.No.293 of 1986 is only an interim arrangement and it cannot be said that the interim arrangement will override the final decree. In fact, ultimately while dismissing A.S.No.1203 of 1989, this Court has confirmed the Judgement and Decree in O.S.No.293 of 1986 which means that the interest has not been granted by this Court. In the light of the above, the order of the learned I Additional Subordinate Judge, Erode, in E.P.No.13 of 2006 in O.S.No.293 of 1986 insofar as it relates to the grant of interest has to be set aside.

In the result, the Civil Revision Petition is partly allowed and the order of the learned I Additional Subordinate Judge, Erode in E.P.No.13 of 2006 in O.S.No.293 of 1986 is set aside with respect to the grant of interest and in all other respects including the finding with respect to limitation the order is confirmed. There shall be no order as to costs.

11.10.2018

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Index : Yes/No
Speaking order/non-speaking order

To

The I Additional Subordinate Judge,
Erode.

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P.T.ASHA, J,

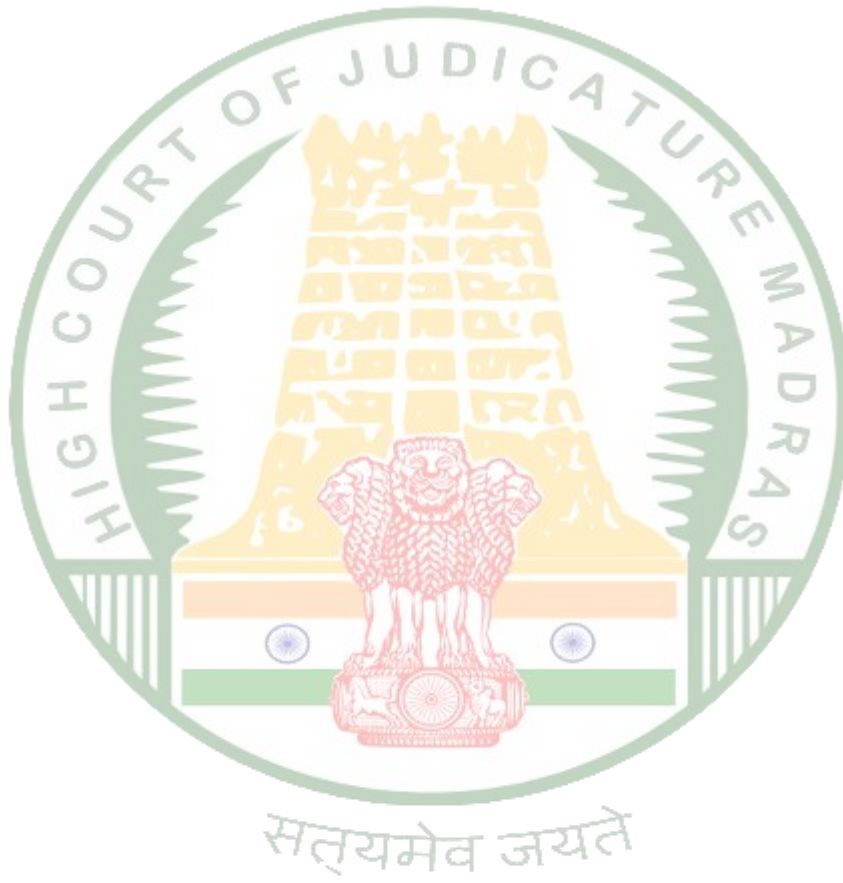
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Pre-delivery order in
C.R.P(NPD).No. 3700 of 2009

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