

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 05.12.2018**

**CORAM**

**THE HONOURABLE MR. JUSTICE M.S. RAMESH**

**CRP.(NPD)No.3845 of 2018**  
**& CMP.No.21414 of 2018**

A.T.Kalyani

...Petitioner

V.

K.J.Robert (deceased)  
rep. by its President  
International Church in India Trust  
rep. by its LRs

1.L.Muthiah

2.M.Selvaraj

...Respondents

**PRAYER:** Civil Revision Petition filed under Section 115 of C.P.C.,  
praying to set aside the fair and decretal order dated 09.10.2018 in  
E.A.No.641 of 2017 in E.P.No.1896 of 2001 on the file of the learned X  
Assistant City Civil Judge, Chennai.

For Petitioner : Mr.G.Veerapathiran

**ORDER**

When the petitioner herein had filed an application before the  
Execution Court seeking for dismissal of the execution petition in  
E.P.No.1896 of 2001 on the ground that the execution petitioners,

being private persons, are not authorized to maintain an execution petition since the exemption granted under Government Order, exempting the demised premises by the original plaintiff was not available to private persons in view of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as Rent Control Act) and that, in view of Section 10 of the Rent Control Act, the decree of a Civil Court can be executed only by a Rent Control Court, the same came to be dismissed by an order dated 09.10.2018, which is under challenge in the present revision.

2.Heard Mr.G.Veerapathiran, learned counsel appearing on behalf of the petitioner.

3.The background on which the petitioner herein had filed the aforesaid application is as follows:

a)The suit in O.S.No.237 of 1985 came to be instituted by an International Church in India Trust represented by its President, K.J.Robert to vacate and deliver vacant possession against the tenants of a property bearing door No.35, V.O.C. Nagar, Anna Nagar, Chennai. The suit was instituted by invoking the exemption granted under

G.O.Ms.2000 to all buildings owned by the Hindus, Christians and Muslims public and private Charitable Trust from and out of the purview of the Rent Control Act. The suit came to be decreed on 18.02.1988. The appeal as against the original suit in A.S.No.28 of 1989 was dismissed on 11.01.1990 and the same was confirmed in S.A.No.1313 of 1990 on 07.09.1990 by this Court. As such, the judgment and decree of eviction had become final. In the meantime, the original tenant, Desikn Singh Nadar had sublet his portion of the tenant premises to one Mani Nadar, who was the second defendant in the suit. The present petitioner is the widow of Mani Nadar.

b)The then plaintiff had filed an execution petition in E.P.No.1296 of 1993 on 09.01.1996 for recovery of possession in terms of the decree. The said execution petition came to be dismissed for default on 09.01.1996. After almost three years, the plaintiff church authority had sold the suit property to one Muthiah and Selvaraj, who are the respondents herein, through a registered Sale Deed dated 13.11.1998.

c)After the sale, the respondents herein had filed the present execution proceedings in E.P.No.1896 of 2001. By an order dated 09.09.2004, the execution petition came to be allowed. As against the order of the Execution Court dated 09.09.2004, the petitioner herein

had filed revisions in CRP.Nos.2191 & 2192 of 2004 before this Court on the ground that the respondents herein had no locus standi to execute the decree, since they are not the owners of the subject matter of the suit property nor are they the legal representatives of the deceased K.J.Robert or successors in office of the International Church in India Trust. By an order dated 14.08.2009, the revisions came to be dismissed. Subsequently, the petitioner herein had filed another application in E.A.No.641 of 2017 again seeking for dismissal of the execution petition in E.P.No.1896 of 2001 as not executable. This application was dismissed by an order dated 09.10.2018 and the same is under challenge in the present revision.

4.Mr.G.Veerapathiran, the learned counsel for the petitioner put forth his submissions on two main grounds. Firstly, he submitted that the suit was filed on the strength of G.O.Ms.2000, which exempts buildings owned by Christian Trust from the purview of the Rent Control Act and since the respondents herein had subsequently purchased the suit property, cannot execute the decree since the exemption will not apply to them. Secondly, he submitted that in view of Section 10 of the Rent Control Act, a tenant cannot be evicted through civil proceedings in execution of a decree and as such, the

decree can be executed only under the provisions of the Rent Control Act and not otherwise. In support of such contentions, the learned counsel relied upon three citations of this Court reported in **CDJ 1977 MHC 331 [Chand Basha V. Pyari Bi]**, **CDJ 1980 MHC 190 [A.Krishnaswami V. S.Rasheeda]** and **CDJ 2008 MHC 589 [Arunachalam @ Annamalai v. Subbulakshmi Ammal & others]**.

5.I have given careful consideration to the submissions made by the learned counsel for the petitioner.

6.Before addressing the grounds raised by the learned counsel for the petitioner, a few facts that was noticed by this Court, requires a mention.

7.The suit property came to be purchased by the respondents herein on 13.11.1998 through a registered Sale Deed and even after 20 years, these respondents are unable to enjoy the property. The original decree came to be passed on 18.02.1988 which is about 30 years back. One of the observations made by the Execution Court, while rejecting the petitioner's application seeking for dismissal of the execution proceedings, is that, the application itself was an abuse of

process of law. After due consideration of the arguments of the learned counsel for the petitioner, this Court is also of the same view that the petitioner had grossly abused the process of law for the reasons stated hereinafter.

8.It is true that the original plaintiff namely, Late K.J.Robert, President of International Church in India Trust, had initiated the suit by invoking the exemption granted in G.O.Ms.2000, wherein, the buildings owned by Christian Trust are exempted from the purview of the Rent Control Act. After the decree had become final, the respondents herein had purchased the suit properties.

9.When these respondents had filed the execution proceedings in E.P.No.1896 of 2001, the same was allowed by an order dated 09.09.2004. As against the same, the petitioner herein had filed CRP.Nos.2191 & 2192 of 2004. The main ground raised before this Court in the aforesaid revision in CRP.Nos.2191 & 2192 of 2004 **[1.T. Deenadayal Singh, 2.Roja Lyla mani, 3.Gani Desiga Singh (died) & 4.A.T. Kalyani Vs. 1.L.Muthiah, 2.M.Selvaraj, 3.Ranjit Singh, 4.Jaswant Singh, 5.Mrs.Shyma Singh & 6.Mrs.Jacqualena and 1.Ranjit Singh, 2.Jaswant Singh, 3.Mrs.Shyma Singh,**

**4.Mrs.Jacqualena Vs. 1.L.Muthiah, 2.M.Selvaraj, 3.T. Deenadayal Singh, 4.Roja Lyla mani, 5.Gani Desiga Singh (died), & 6.A.T. Kalyani** respectively] is that the respondents 1 and 2 herein had no locus standi to maintain the execution proceedings, as they are not the legal representatives of the deceased K.J.Robert and that they are also not the successors in office of the President of International Church in India Trust. This Court, while dismissing the Civil Revision Petitions through its order dated 14.08.2009 had held that the subsequent transferee of the subject matter of the suit property is entitled to file the execution petition even without obtaining orders from the Execution Court. The relevant portion of the observations made by this Court in the Civil Revision Petitions in CRP.Nos.2191 & 2192 of 2004 are as follows:

*"9.The learned counsel for the petitioners vehemently contended that since the respondents 1 and 2 are not legal representatives of the decree holder, namely, International Church of India Trust and hence, they cannot be considered as legal representatives of the deceased K.J. Roberts. Further, the learned counsel contended that the respondents have no locus standi to execute the decree and therefore, the order allowing the execution petition has to be set aside.*

10.Further, the learned counsel for the petitioners contended that the respondents are neither the legal representatives of the deceased K.J. Roberts nor the successors-in-office as President of International Church of India.

11.The learned counsel for the petitioners submitted that instead of deciding the locus standi of the respondents 1 and 2 to execute the decree, the courts below have gone into the question whether the suit land is a poramboke land or property of the Church and confirmed the ownership of the property which is vested with the plaintiff International Church of India but they have not decided the question as to whether the respondents 1 and 2 have any locus standi to execute the decree and therefore he contended that the order passed in the execution petition is not sustainable in law.

12.The learned counsel for the petitioners contended that the burden of proof lies on the respondents 1 and 2 to prove that they are the owners of the subject matter of the decree, which was not discharged by adducing oral and documentary evidence and in the manner known to law.

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21. On the basis of the relief claimed by the plaintiff, which was decreed and confirmed by the two appellate courts and since the petitioners/judgment debtors have not handed over the possession and in the wake of the death of the plaintiff, the respondents 1 and 2 have filed the execution petition as legal representatives of the deceased K.J. Roberts, which was allowed.

22. Now, the main contention of the learned counsel for the petitioners is that the respondents 1 and 2 have no locus standi to execute the decree as they are not the legal representatives of the deceased K.J. Roberts or they are not the successors-in-office of the President of International Church in India Trust.

23. At this juncture, it has to be pointed out that the respondents 1 & 2 have purchased the suit property, which was sold by the plaintiff and the respondents 1 and 2 have produced the sale deed before the executing court and on that basis, they themselves impleaded in the execution petition, which was allowed. Even assuming that as per the contention of the petitioners that the suit property being the Trust property, the then President has no right to sell the same to the respondents 1 and 2, if it is so,

*either the present President of the Trust or other members of the Trust would have objected to the selling of the suit property to the respondents 1 and 2 and in the absence of any such objection till this date, the contention of the petitioners cannot have any leg to stand. Further, the purchase of the suit property by the respondents 1 and 2 from the plaintiff was not refuted by oral and documentary evidence and in the absence of any such evidence against the claim of the respondents 1 and 2, the contention of the learned counsel for the petitioners whatsoever cannot be accepted.*

*24.As rightly pointed out by the learned counsel for the respondents 1 and 2, the transferee of the subject matter of the decree can file the execution petition even without obtaining any orders from the court cannot be brushed aside in the absence of any proof to show that the respondents are not the transferee of the subject matter of the decree or somebody is the transferee of the subject matter of the decree.*

*25.In 1998 (II) CTC 667, following the decision of the Apex Court reported in Muthukaruppa Pillai v. Ganesan, 1995 Supp. (3) SCC 69, the learned Judge of this Court has held as follows:-*

*"9. Therefore, on any analysis of the decisions cited above, especially, the latest judgment of the Supreme Court reported in Muthukaruppa Pillai v. Ganesan, 1995 Supp. (3) SCC 69 a person succeeding to a decree can seek to execute under Section 146 C.P.C. and that unless and otherwise the decree for injunction was specifically restricted to the plaintiff, it is definitely executable by any individual succeeding to the interest of the decree holder."*

*26. In AIR 1989 Madras 340, the learned Judge of this Court while interpreting Section 146 C.P.C. and Explanation to R.16 of O.21 C.P.C., has held as follows:-*

*"4.....As rightly observed by the Courts below by virtue of the Explanation to R.16 of O.21 C.P.C. read with S.146 C.P.C., the respondent who got transfer of the subject matter of the suit by virtue of the sale in his favour can apply for execution of the decree without a separate assignment of the decree as required by R.16.".....*

*"Thus it is clear from the ratio*

*laid down in the above cases that the respondent who claimed title under the decree-holder, is certainly entitled to maintain the execution petition under S.146 and the Explanation to R.16 of O.21, C.P.C."*

27. At this juncture, it has to be pointed out that for the contention of the learned counsel for the petitioners that the combined reading of Section 146 C.P.C. with Explanation to R.16 of O.21, C.P.C., does not stipulate that the purchaser not be in the assignee of the decree holder cannot straightaway file the execution petition without following the procedure laid down under O.21 R.16 C.P.C., the above observation of the learned Judge of this Court in AIR 1989 Madras 340 is a direct answer to the said contention.

28. In view of the above discussion, the contention of the learned counsel for the petitioners regarding locus standi of the respondents 1 and 2 to execute the decree cannot be accepted.

29. Further, with regard to limitation, it is pertinent to extract the order passed in the execution petition, which is more enough to reject the contention of the learned counsel for the petitioners, which reads as under:-

*"According to them the E.P. is time barred. But according to the petitioners E.P. is well within time. After hearing rival submission this Court is of the view that the E.P. is well within time. Because the suit was decreed on 18.2.1988. Appeal A.S.88/89 was dismissed on 19.1.1990. Second Appeal S.A.No.1313/90 was dismissed on 7.9.90. In these circumstances as this decree is for delivery of possession the E.P. ought to have been filed within 12 years. As the E.P. is filed in the year 2001 within 12 years from the date of disposal of second appeal, this E.P. is well within time. So this contention is rejected."*

*30.Further, as rightly pointed out by the learned counsel for the respondents though the suit was filed in the year 1985 and the decree was passed in the year 1988, still the respondents 1 and 2 cannot enjoy the benefit such decree as they are prevented by the petitioners/judgment debtors by filing one petition after another under one pretext or the other, which is nothing but a clear case of abuse of process of law and the Court.*

*31.It is pertinent to point out, the decision of the Apex Court, which held while dealing with*

*a similar matter in ((2007) 14 SCC 304, wherein, it is held as follows:-*

*"4. We do not find any ground to interfere with the impugned order.*

*5. As the suit for recovery of possession of the property in question was filed in the year 1995 in which ex parte decree was passed in the year 1998 and more than nine years have expired from that date, but on one ground or the other, decree has not been allowed to be executed, we hereby direct the executing court to see that the vacant possession of the subject of dispute is delivered to the decree holders within a period of one month from the date of receipt/production of copy of this order. In case for delivery of possession any armed force is necessary, the executing court shall requisition the same from the Superintendent of Police concerned, who shall depute it within forty-eight hours from the date the requisition is received by him. It is further directed that if any person other than the judgment debtor is found in possession, he shall be also dispossessed by the armed force."*

*32. Viewed at from any angle and for the*

*reasons stated above, this Court is of the view that the order passed by the executing court does not suffer from any illegality or irregularity.*

*33.Further, following the order passed by the Apex Court in ((2007) 14 SCC 304, I am inclined to pass the following order:-*

*"The petitioners/judgment debtors shall vacate and hand over the suit property to the respondents 1 and 2 within a month from the date of receipt of a copy of this order and in the event of any failure on the part of the petitioners to comply with such direction, the respondents 1 and 2 are hereby directed to evict the petitioners/judgment debtors or other than the judgment debtors with police protection, if necessary."*

*In fine, the above revision petitions are dismissed with costs. Connected M.Ps. are also dismissed.*

10.Thus, while answering the ground raised by the petitioner herein that the respondents 1 and 2 have no locus standi to execute the decree, this Court, had held that the person succeeding to a decree, can seek to execute the same and thereby had directed the petitioners therein to vacate and hand over the suit property within one month.

11.It would not be out of place to mention here that the respondents 1 and 2 herein having purchased the property after the decree had become final, will squarely fall under the definition "Legal Representative" as defined in Section 2(11) of the Civil Procedure Code. Likewise, Section 146 of the Civil Procedure Code enables such a transferee to maintain an execution proceedings in their capacity as legal representative and can seek for execution of the decree.

12.Though this Court had directed the petitioner herein to vacate and hand over the suit property within a month, the petitioner has chosen to indulge in further mischief by filing another application in the execution proceedings in E.A.No.641 of 2017, wherein she had once again sought for dismissal of the execution proceedings in E.P.No.1896 of 2001 on the ground that it is not executable. The ground raised in the present application once again is that the respondents 1 and 2 have no locus standi to execute the decree since the exemption granted under G.O.Ms.2000 was not available to them and that the decree granted by the Civil Court can be executed only by invoking the provisions of the Rent Control Act.

13.The averments and the prayer sought for in the application in E.A.No.641 of 2017 is undoubtedly an attempt to re-litigate the relief already sought for and thereby, would hit by the Principles of Res-Judicata as enshrined under Section 11 of the Civil Procedure Code.

14.When the earlier revision petitions were filed challenging the delivery order passed in the same execution proceedings in E.P.No.1896 of 2001, the grounds raised in the present application in E.A.No.641 of 2017 were very much available to the petitioners. The locus standi of the respondents to execute the decree was the matter directly and substantially in issue in the Civil Revision Petitions in CRP.Nos.2191 & 2192 of 2004 also. The petitioner had mischievously raised these grounds on questioning the locus standi of the respondents 1 and 2 and attempted to impress this Court as if these are matters which were not directly and substantially in issue in the earlier Civil Revision Petitions. Apparently, both these grounds raised by the petitioner herein could have been and ought to have been made as ground of attack in the earlier civil revision petitions and when such grounds were not taken in the earlier proceedings, they are deemed to have been taken and decided against the petitioner herein in the earlier proceedings. This concept of "*Constructive Res-Judicata*" has

been upheld in various decisions of the High Court as well as the Hon'ble Apex Court. It is also a settled proposition that the Principles of Constructive Res-Judicata operates in execution proceedings also and Explanation 7 to Section 11 of CPC also provides for the same. Hence, by applying the Principles of *Constructive Res-judicata*, it can only be held that the application filed by the petitioner herein itself deserves no consideration. The first ground raised by the petitioner herein is answered accordingly.

15.The second ground raised by the petitioner is that in view of Section 10 of the Rent Control Act, the respondents herein cannot maintain the execution proceedings. This ground again can only be termed as "misconceived". It is no doubt true that Section 10 of the Rent Control Act empowers a landlord from filing the suit for eviction of the tenant but the execution of such a decree obtained in the suit can only be made under the Rent Control Act. But the issue in the present revision is as to whether the provisions of the Rent Control Act itself would apply to the instant case?

16.As stated earlier, the original plaintiff had invoked the exemption under the Government Order granted to buildings owned by Christian Trust, from and out of the purview of the Rent Control Act.

Assuming that the suit property was not transferred by the plaintiff to the respondents herein and if the original plaintiff was alive, he could have maintained the execution proceedings before the Civil Court and need not have invoked the provisions of the Rent Control Act. This proposition is not in dispute at all.

17. The ground now raised by the petitioner is that since the respondents herein, being private persons, had purchased the suit property, the earlier exemption granted to the original plaintiff to exclude the persons from the provisions of the Rent Control Act is not available to them now. I had already found that the respondents herein, being the purchasers of the suit property after about three years when the decree had become final, are deemed to be the legal representatives of the original decree holder and in view of Section 146 of the Civil Procedure Code, they would be entitled to continue the execution proceedings or can even file a fresh execution petition. When the exemption granted under G.O.Ms.2000 has been availed by the original plaintiff and the decree had also become final, in view of the subsequent sale, the respondents herein would automatically step into the shoes of the original decree holder and would be entitled to execute the decree as if the exemption was also granted to them. In

other words, when the Government Order had extended exemption to the suit property from the purview of the Rent Control Act, such an exemption would continue until the decree is finally executed. As such, the attempt made by the petitioner herein to take shelter under Section 10 of the Rent Control Act can be of no avail.

18.The learned counsel for the petitioner relied upon the decisions of this Court reported in **CDJ 1977 MHC 331 [Chand Basha V. Pyari Bi]** , **CDJ 1980 MHC 190 [A.Krishnaswami V. S.Rasheeda]** and **CDJ 2008 MHC 589 [Arunachalam @ Annamalai v. Subbulakshmi Ammal & others]** for the proposition that a decree of a Civil Court can be executed only under the provisions of the Rent Control Act. I had already elaborately discussed in the foregoing paragraphs that the protection under Section 10 of the Rent Control Act is not available to the petitioner herein in the peculiar circumstances of this case, wherein the exemption of the Government Order, granting exemption to the buildings from the Rent Control Act to Trust was invoked and as such, the proposition laid down in these three decisions will not be of any help to the petitioner herein.

19.It is rather unfortunate that the respondents 1 and 2 herein being the bona-fide purchasers of the suit property in the year 1998,

have been waiting before the Courts, for almost 20 years to enjoy the benefits of their purchase. The records placed before this Court reveals that atleast one of them namely, the first respondent herein is about 72 years. This long wait has been caused due to sheer abuse of the process of law on the part of the petitioner herein, which requires to be suitably compensated by imposing exemplary costs on the petitioner.

20. In the result, the Civil Revision Petition stands dismissed with a direction to the petitioner herein to pay an exemplary costs of Rs.50,000/- to each of the respondents herein, within 10 days from the date of receipt of a copy of this order. In consequence of the dismissal of this Civil Revision Petition, the petitioner herein shall vacate and hand over the suit property to the respondents 1 and 2 herein within 10 days from the date of receipt of a copy of this order. In case of any further obstruction or refusal on the part of the petitioner to vacate and hand over the suit property, the respondents herein are granted liberty to seek police aid by making an appropriate application to the Deputy Commissioner of Police having territorial jurisdiction over the suit property. On receipt of any such application seeking for police aid, the concerned Deputy Commissioner of Police

shall within 48 hours from the date of requisition, shall ensure that vacant possession of the suit property is handed over to the respondents herein, by extending adequate police aid.

21. Since the Revision is dismissed at the admission stage itself, the Registry is directed to serve a certified copy of this order to each of the respondents, by post.

22. The Civil Revision Petition stands dismissed with the above directions. Consequently connected Miscellaneous Petition is closed.

05.12.2018

Index : Yes

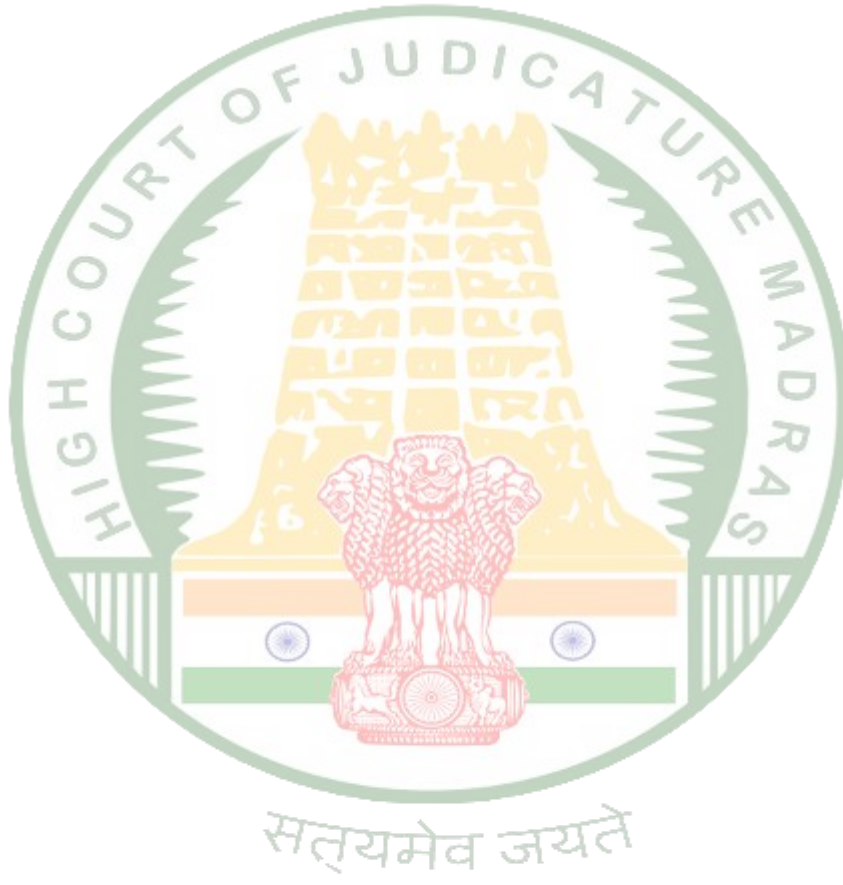
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**Note:** Registry is directed to issue a copy of this order to the respondents, by post.

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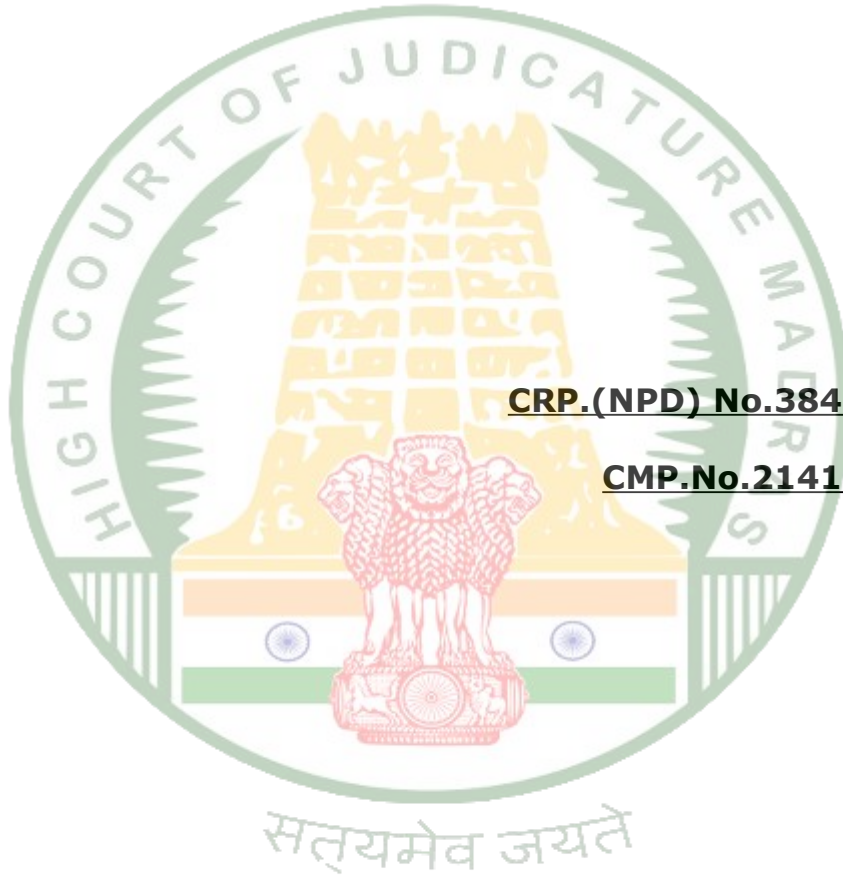
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**M.S.RAMESH. J,**

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