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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) Nos.2059 and 2060 of 2017

and

C.M.P. (MD) No.10238 of 2017

R.Selvam

...Petitioner in both petitions

-vs-

1.Varatharaj

2.Thiruppathy

3.Manivel

...Respondents in both petitions

Common Prayer: Civil Revision Petitions filed under Section 227 of Constitution of India praying to set aside the fair and decreetal order dated 17.06.2017 passed in I.A.Nos.420 and 421 of 2017 in O.S.No.156 of 2016 on the file of the District Munsif Court, Thuraiyur.

For Petitioner : Mr.R.Nandakumar

For Respondents : Mr.T.Vadivelan

(in both petitions)

COMMON ORDER

The plaintiff is the revision petitioner in both petitions. The suit is one for permanent injunction. In the said suit, an application for appointment of an Advocate Commissioner was taken out by the defendants. The Commissioner filed his report. The defendants lodged their objections. But there was a delay on their part. The Court below condoned the delay. Questioning the same, C.R.P. (MD) No.2059 of 2017 has been filed by the plaintiff. The defendants also filed an application for scrapping the Commissioner's report. The said IA was also allowed. Questioning the order of scrapping the commissioner's report, C.R.P. (MD) No.2060 of 2017 has been filed.

2. During the pendency of these petitions, certain developments had taken place. The Commissioner, pursuant to the re-issuance of the warrant went to serve notice on the counsel for the defendants. The learned counsel for the defendants had informed the Commissioner that they did not ask for any appointment of Commissioner. The remuneration was also not paid. Therefore, to that effect, the Commissioner filed a memo and returned the warrant.

3. The subsequent developments are noted by this Court. When the Advocate Commissioner filed his original report, the defendants



are entitled to lodge their objections. The Court below has chosen to condone the delay in lodging the objections. This is purely a discretionary order. Thus, this Court does not propose to interfere with the said order. Therefore, C.R.P.(MD)No.2059 of 2017 is dismissed.

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4. The Court below, after noting that no case has been made out for scrapping the report, has chosen to re-issue the warrant. The order impugned in C.R.P.(MD)No.2060 of 2017 suffers internal inconsistencies. It is also seen that the Advocate Commissioner has also not been examined as witness. Therefore, the question of scrapping the report even without examining the Commissioner will not arise. In this view of the matter, the order impugned in C.R.P.(MD)No.2060 of 2017 is set aside and the same is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar(CS-II)

To:

The District Munsif, Thuraiyur.

+2cc to Mr.R.NANDAKUMAR, Advocate, SR.No. 88338,88339

C.R.P.(PD) (MD) Nos.2059 and 2060 of 2017
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