

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(PD)No. 90 of 2019
and
C.M.P.No.782 of 2019

M. Gagan Bothra

...Petitioner

Versus

1. Anand Nahur

2. S.Mukanchand Bothra

3. M. Sandeep Bothra

4. Vedavalli Kumar

...Respondents

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 27.11.2018 passed in C.M.P.No.49 of 2018 in A.S.No.288 of 2016 by the City Civil Court, Chennai.

For Petitioner : Mr.M. Gagan Bothra

For Respondents : Mr.R.Parthasarathy

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ORDER

By consent of the learned counsel for both parties, the Civil Revision Petition is taken up for final disposal.

2. This Court in catena of decisions has held that when an application under Order 41 Rule 27 of Civil Procedure Code is made, the same cannot be

allowed and it has to be taken up at the time of final arguments and as such allowing the application in the present case cannot be proper. One such judgments reported in Civil Appeal No.14055 of 2015 (Andisamy Chettiar versus Subburaj Chettiar), the relevant portion of the said observation reads as follows:

"An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Learned counsel for the appellant argued before us that the High Court, in revision, at an interim stage of appeal pending before the lower appellate Court, should not have interfered in the matter of requirement of additional evidence."

3. In the instant case, the respondent herein has sought for producing 4 FIRs as additional documents before the appellate Court. The appellate Court though had observed that the proof and relevancy of the documents can be decided only at the time of elaborate enquiry, had allowed the application. In view of the decisions rendered by this Court, as observed above allowing the application may not be proper.

4. In the result, the order dated 27.11.2018 in C.M.P. No.49 of 2018 in A.S. No.288 of 2016 by the learned 15th Additional City Civil Court, Chennai is set aside. Consequently, the learned 15th Additional City Civil Judge is called upon to take up this application in C.M.P. No.49 of 2018 along with

the main appeal, after giving opportunity to both the parties. The Civil Revision Petition is disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2019

Index: Yes/No

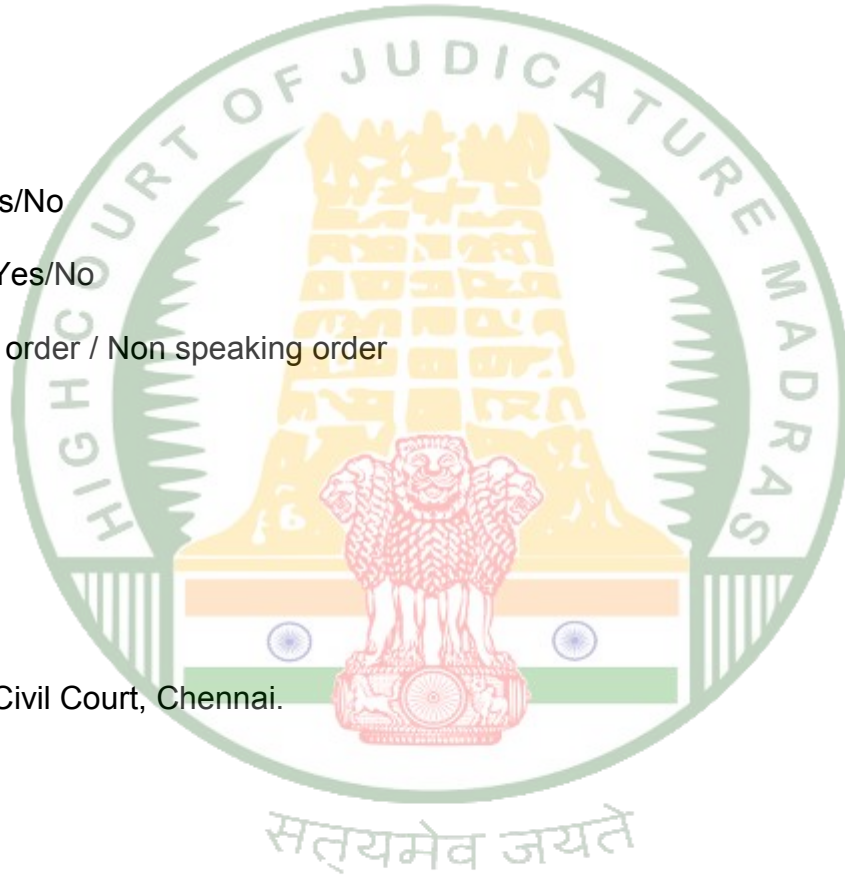
Internet: Yes/No

Speaking order / Non speaking order

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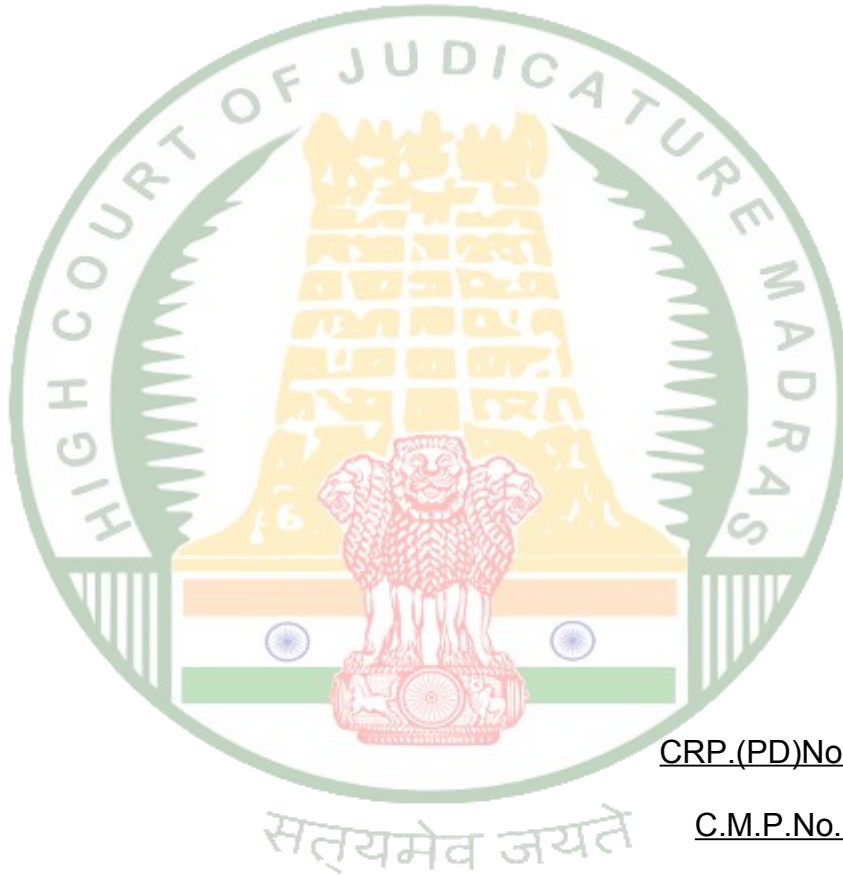
The City Civil Court, Chennai.



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M.S.RAMESH, J.

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