

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.129 of 2019

&

C.M.P.No.1162 of 2019

1.A.Ramasamy

2.R.Dhanalakshmi

...Petitioners

Vs

1.Sivakumar

2.Rajaswami Mills

3.C.Rajamani

4.P.C.Selvakumar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the Fair and Decretal Order dated 22.10.2018 passed in I.A.No.431 of 2018 in O.S.No.12 of 2016 on the file of the I Additional District Court, Erode.

For Petitioners

:

Mr.Govi Ganesan

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the revision petitioners to send the suit cheques for a comparison by an expert and for a report under Section 45 read with Section 73, 73(A) of the Indian Evidence Act. The facts in brief for disposing of the Civil Revision Petition are as follows:

2.The 1st respondent herein is the plaintiff in the suit O.S.No.12 of 2016 on the file of the I Additional District Judge, Erode filed for recovery of the sum of Rs.24,89,270/- together with subsequent interest of Rs.18,50,000/- at the rate of 12% per annum from the date of the suit till the date of realisation based on two cheques dated 12.12.2012 for a sum of Rs.9,30,000/- and another cheque dated 12.02.2013 for a sum of Rs.9,20,000/-. The 1st defendant is the firm and the defendants 2 to 5 are the partners of the firm.

3. Written statement filed by the 2nd defendant was adopted by defendants 1, 3 to 5. There was no denial about the execution of the cheques by defendants 2 to 5. The written statement was filed on September 2016, thereafter on 21.08.2018 the petition which is the subject matter of the Civil Revision Petition namely I.A.No.431 of 2018 was filed by the 3rd and 5th defendants to send the suit cheques for verification of the signature.

4. The said application was vehemently opposed by the respondent/plaintiff *inter alia* contending that in the written statement there was no objection to the said cheque and that the present petition is only an attempt to drag the case.

5. The learned I Additional District Judge, Erode on a consideration of the pleadings dismissed the application by her order dated 22.10.2018. It is challenging the said order the

revision petitioners namely defendants 3 and 4 are before this Court.

6.Heard, Mr.S.Sriram, learned counsel on behalf of Mr.Govi Ganesan for petitioners. From a perusal of the order it is clear that the suit was posted for the cross examination of P.W.1, the defendants 1 to 5 did not appear and were set *exparte* on 07.06.2017 and *exparte* decree was passed before 04.07.2017. Thereafter petitioners 3 and 5 have filed I.A.No.416 of 2017 to set aside the *exparte* decree. After hearing both sides the petition was dismissed, against that order, C.M.A.No.6 of 2018 was filed by the revision petitioners herein before this Court and the same was allowed with a direction that the suit should be disposed of within a period of two months. At this juncture, the present petition has been filed. From a perusal of the records, it is seen that at the first point of the suit after entering appearance namely filing of the written statement there is no whisper about the genuineness or otherwise of the cheque.

It is only when the matter was posted in the list and posted for trial that the present petition has been taken up and no convincing reason has been given in the affidavit filed in support of the petition. I do not find any infirmity in the order passed by the I Additional District Judge, Erode. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

04.02.2019

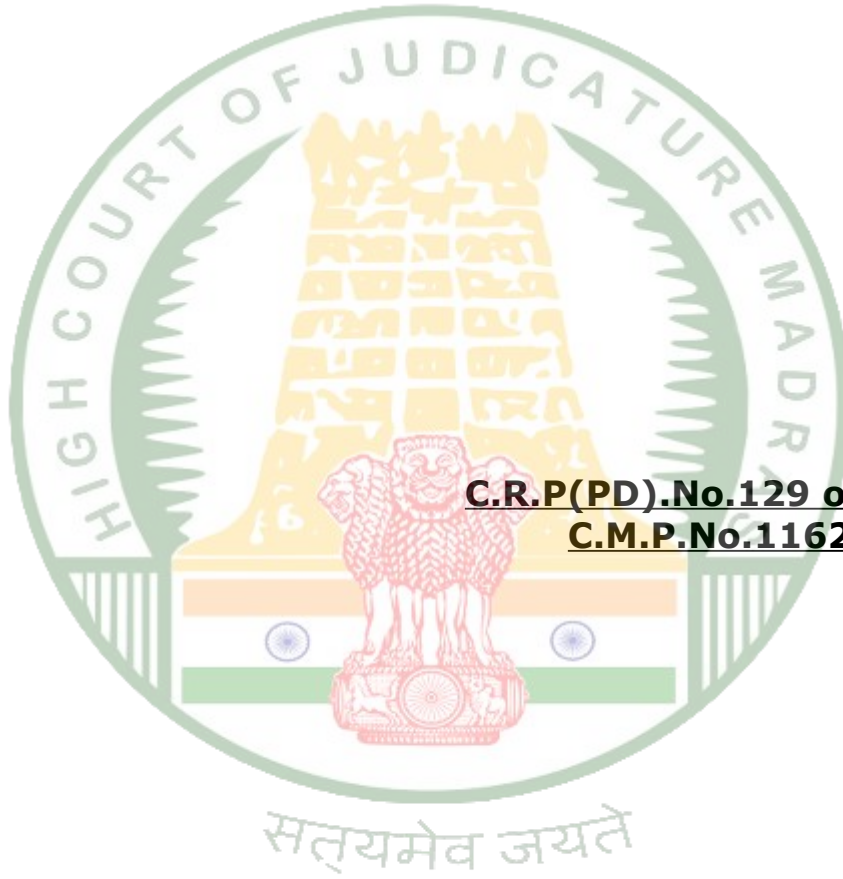
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Index : Yes/No
Speaking order/non-speaking order

To
The I Additional District Court,
Erode.

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P.T.ASHA, J.,

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