

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(NPD).No.355 of 2019

V.Durairaj

.. Appellant / Petitioner

Vs

1.M.Pakkirisamy

2.M.Lakshmanan

3.M.Panneerselvam

..Respondents/Respondents

Civil Revision Petition filed under Article 227 of the Indian Constitution to grant an order of direction the learned Sub Ordinate Judge, Ulundurpet to number the Unnumbered C.M.A.19R.No.7241 of 2018 with the time as stipulated by this Hon'ble Court.

For Petitioner : Mr.T.Dhanasekar

ORDER

The above Civil Revision petition is filed challenging the frequent returns being made by the learned Sub Ordinate Judge, Ulundurpet, of the appeal which has been filed by the petitioner before this Court, as against the order in I.A.No.871 of 2018 in O.S.No.83 of 2010 dismissing his application filed for restoring the suit, which was dismissed for default. The above application appears to have been filed on 19.11.2018. On 18.12.2018, the learned Sub

<http://www.judis.nic.in> Ordinate Judge, Ulundurpet, made the following return:

"Rtd:

1.C.F. Not affixed in the certified copy of fair order and decreetal order.

2.How this C.M.A. is maintainable to the file of before this Court, to be stated.

Time two weeks."

the same was represented by the counsel for the petitioner on 02.01.2019 extracted hereunder:

"Represented:

1.Court fee affixed.

2.As per provision contained in order 43 Rule 1(e) prescribed only an appeal from orders. Hence this C.M.A. is very much maintainable before this Hon'ble Court.

*Complied
with represented by appellant by
V.Durairairaj
02.01.2019"*

In the said return, the Learned Counsel had clearly brought to the notice of the learned Sub Ordinate Judge, Ulundurpet, that the appeal is maintainable and is being preferred under the provisions of order 43 rule 1(c) of the CPC. Unfortunately, on a total non-application of mind, the Learned Sub Ordinate Judge, Ulundurpet has once again

mechanically returned, the petition on 11.01.2019 raising the following queries:

"Rtd:

1.Previous return order dated 18.12.2018 not complied with

2.Order 43 Rule 1(e) CPC is not applicable in CMA.

3.Details of Parties & Advocate particulars to be furnished for filing new "e" Court filing system.

4.Fly sheet to be attached time two weeks."

2 In fact the learned Sub Ordinate Judge, Ulundurpet, has made an observation that the provision of order 43 rule 1(c) of the Civil Procedure Code is not applicable in C.M.A. The above return is the subject matter of challenge before this Court.

3 It is unfortunate that the learned Judge has not for considered the provisions of order 43 Rule 1(c), which is extracted hereunder:

"(c) an order under Rule 9 of order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;"

Reading of this provision would clearly elucidate that when an application has been filed under the provisions of Order 9 Rule 9, the

P.T.ASHA, J.
dua

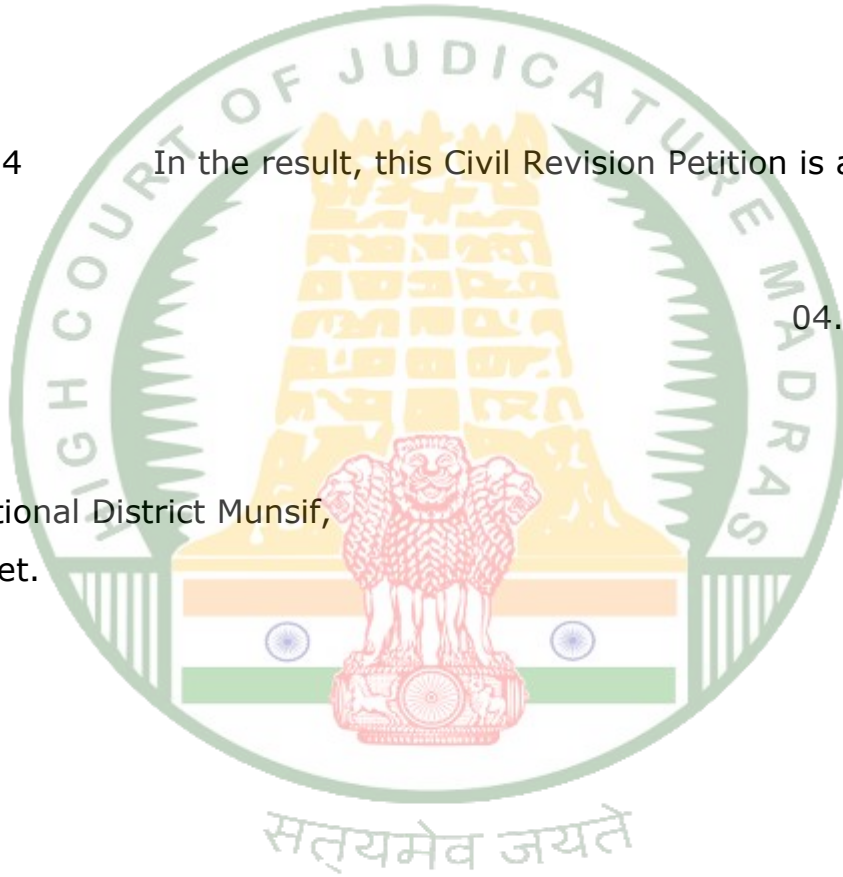
43 Rule 1(c). The learned Sub Ordinate Judge, Ulundurpet, is directed to number the CMA and take the matter for hearing on merits. Registry is directed to return the original CMP to the learned counsel.

4 In the result, this Civil Revision Petition is allowed.

04.02.2019

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To
The Additional District Munsif,
Ulundurpet.



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