

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.771 of 2019
and
C.M.P.No.5086 of 2019

1.R.Kishore Kumar
2.R.Raj Kumar
3.P.Rajan

...

Petitioner/Defendants 1-3

-vs-

M.Yuvaraj

...

Respondent/Plaintiff

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the condition imposed by the learned XIX Additional City Civil Judge, Chennai in I.A.No.233/2018 dated 01.12.2018 to deposit Rs.3,00,000/- in to the credit of the suit on or before 17.12.2018 to allow the reopen petition and the consequential dismissal order dated 19.12.2018.

For Petitioners : M/S.P.Prakash Paul

For Respondent : M/S.G.Sugumaran for
Caveator counsel

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.233 of 2018 directing the revision petitioners to deposit a sum of Rs. 3,00,000/- to the credit of the

suit on or before 17.12.2018 in order to allow the reopen petition.

2.The facts in brief are as follows:

2.1.The respondent herein had filed a suit for recovery of a sum of Rs. 14,26,000/- together with interest at 12% on Rs.10,50,000/- from the date of the plaint till realization. In the above matter, the plaintiff side evidence was closed as early as in the month of October 2017. Thereafter in November 2017 i.e. 15.11.2017, the revision petitioners herein had come forward with a petition filed under Order XIII Rule 2 to condone the delay in receiving certain documents numbering about 9. The respondent had objected to the same but however by an order dated 04.06.2018 the learned XIX Additional City Civil Judge, Chennai, was pleased to allow the said petition. The learned Judge in the said order stated that document No.5 and 6, the statement of accounts of 1st and 2nd defendants, need not be received as it is not duly authenticated by the Officer concerned and therefore, the learned Judge had directed the other documents to be received in evidence, except for documents No.5 and 6. Thereafter, it is seen that the defendants did not proceed with the trial and evidence on the defendants side was closed on

09.07.2008. The defendants thereupon filed I.A.No.233/2018 to reopen the defendants side evidence which was closed. In the affidavit filed in support of the said petition the revision petitioners contended that as soon as they had come to know the documents No.5 and 6 had been rejected for want of certification, they had filed copy application to obtain the certified copy of the order to prefer Civil Revision Petition and thereafter, the case was adjourned on 12.06.2018, on 27.06.2018 and finally, on 09.07.2018 the evidence on the side of the defendants was closed.

2.2.It is the case of the defendants that on 09.07.2018, their counsel had prepared the proof affidavit to file it on 09.07.2018. However since he was suffering from severe fever he could not attend hearing and he was advised to take bed rest. Therefore, it is that the evidence came to be closed and the matter was posted on 19.07.2018 for arguments.

2.3.For those reasons, the revision petitioners have sought for reopening the evidence on the defendant side. The learned Judge had, in detail, observed that on 11.10.2017, evidence of

PW1 was closed and ultimately, on 31.01.2018 the plaintiff had closed their side of the evidence and the matter has been adjourned for the defendants to open their evidence and ultimately, I.A.No.188/2017 was filed for receiving certified documents and this application was allowed on 04.06.2018 however in stead of proceeding with the evidence, the defendants sought time and ultimately on 19.07.2018, the defendants side evidence was closed and later the matter was listed for arguments and on that day the petitioners come forward with the petition to reopen the defendants side evidence.

2.4.The learned Judge allowed the said petition on condition that the revision petitioners should deposit a sum of Rs.3,00,000/- to the credit of the suit on or before 17.12.2018, failing which the petition shall stand automatically dismissed. Instead of complying with the said order the revision petitioners had filed a petition to extend time to enable the petitioners to procure the order copy in I.A.No.233/2018 in O.S.No.960/2014. This application was filed under the provisions of Section 148 of the Code of Civil Procedure.

3. Since the earlier order of the Court in I.A.No 233/2018 had not been complied with, the application was automatically dismissed. Challenging the said order the revision petitioner is before this Court.

4. From the docket orders, it is evident that the revision petitioners had filed an application seeking enlargement not for making pay but only for filing the revision. Section 148 of the Code of Civil Procedure would reads as follows:

"148. Enlargement of time? Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

5. It is amply clear that what is contemplated in Civil Revision Petition is to enlarge the time for condonation of an Act, which has been prescribed by the Court namely payment of money. Therefore, at each juncture, the revision petitioners have been attempting to scuttle the legal proceedings from reaching its logical conclusion. The learned XIX Assistant City Civil Judge has rightly dismissed the enlargement petition stating that the prayer

given in the petition is unknown to law under Section 148 of the Code of Civil Procedure.

6. There is no merits in the application filed , I do not find any infirmity in the order passed by the learned XIX Additional City Civil Judge, Chennai in I.A.No.233/2018 dated 01.12.2018, accordingly the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2019

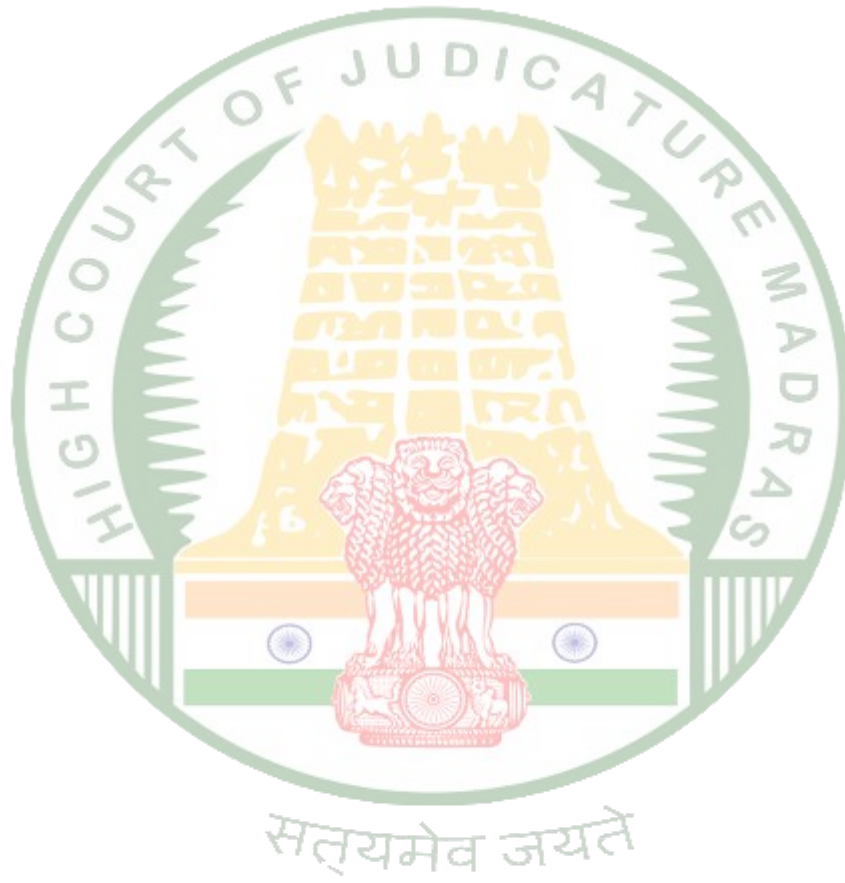
Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

jrs

To

The XIX Additional City Civil Judge,
Chennai

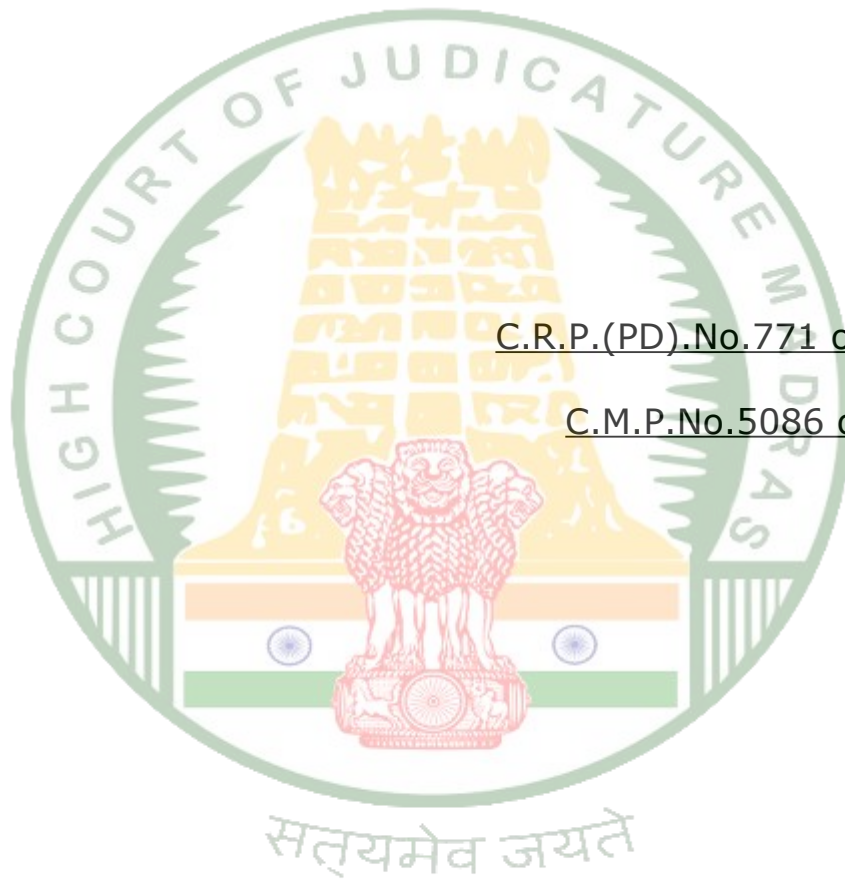
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P.T.ASHA, J.,

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