

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P(PD)No.398 of 2019

S.Balasubramanian

..Petitioner

-Vs-

M.N.Madhu

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to direct the III Additional City Civil Court, Chennai to take the petition in I.A.CFR No.5208 of 2019 in O.S.No.2762 of 2016 on file and number the same.

For Petitioner : M/s.R.Saranya

ORDER

The present revision is against the docket order returning the petitioner's second application for interim injunction questioning its maintainability.

2. In normal circumstances, when an appeal remedy is available, this Court will not usually invoke the power under Article 227 of Constitution of India. In the instant case, an order of interim injunction came to be

granted on condition that the petitioner shall pay a sum of Rs.5,00,000/- to the respondent on or before 19.08.2016. Initially, the petitioner had paid a sum of Rs.10,00,000/- and subsequently, pursuant to the conditional order passed by the trial Court, the sum of Rs.5,00,000/- was also paid. This aspect has been recorded by the trial Court in its order dated 20.04.2018.

3. Though the trial Court had observed that both the parties have admitted that the petitioner/plaintiff had paid the amount of Rs.5,00,000/- after 19.08.2016, the application in I.A.No.6846 of 2016 came to be dismissed on the ground that the petitioner had not complied with the conditional order, "prior to 19.08.2016."

4. When the petitioner has also produced a bank statement evidencing that the amount of Rs.5,00,000/- has been paid, the trial Court ought to have taken a lenient view by accepting the payment made and extended the interim injunction. Nevertheless, the learned counsel for the petitioner would submit that they are willing to amend the prayer sought for in the application seeking for extension of time and record the payment made in the earlier I.A.No.6846 of 2016.

5. Since the trial Court had earlier found it fit to grant an interim order on condition and the same has also been complied with, it would be appropriate to grant liberty to the petitioner to amend the prayer in their application in I.A.CFR No.5208 of 2019.

6. In the light of the above observations, the Civil Revision Petition is disposed of with liberty to the petitioner to amend the prayer in I.A.CFR.No.5208 of 2019 and present the same before the learned III Additional City Civil Judge, Chennai. On receipt of such application, the Registry of the learned III Additional City Civil Judge, Chennai shall number the same and pass final orders, recording the petitioner's compliance of the earlier conditional order and consequently grant the interim injunction. Such an exercise shall be completed atleast within one week from the receipt of the amended application. Till such an order is pronounced, there shall be an order of interim injunction restraining the defendant from auctioning the suit property in O.S.No.2762 of 2016. No costs.

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Index: Yes/No

Internet: Yes/No

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Note: Issue Order copy on 05.02.2019.

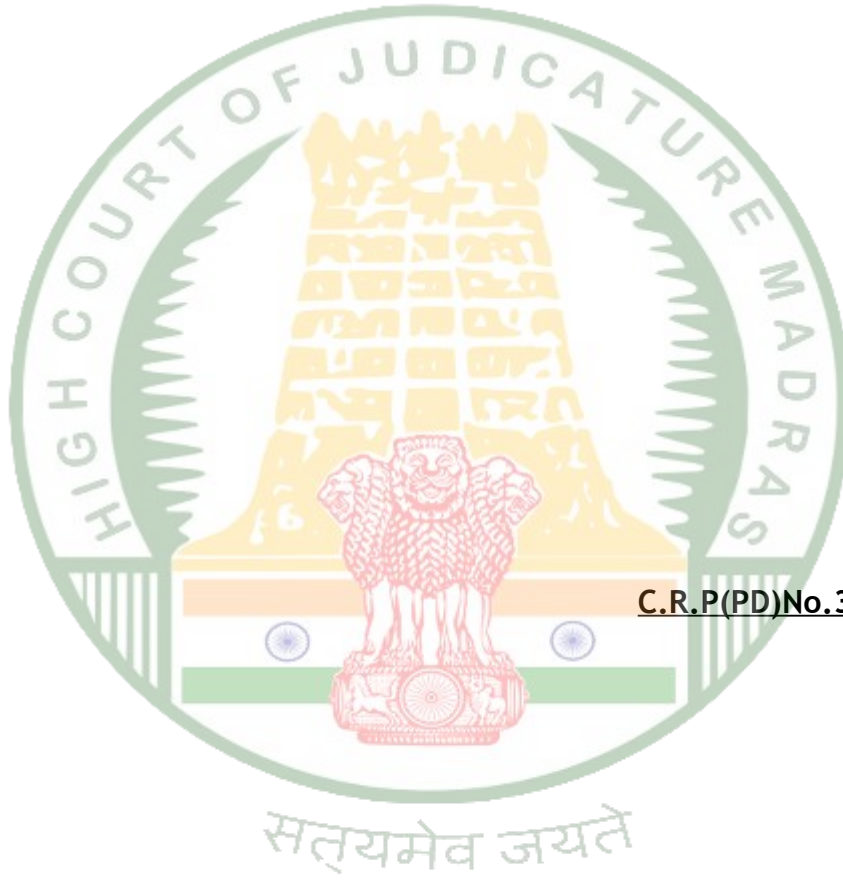
To
The III Additional City Civil Court,
Chennai.



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M.S.RAMESH,J.

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