

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.1508 of 2012 and
M.P.No.1 of 2012

S.T. Santhanam

... Petitioner

v.

R.Visalakshi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.02.2011 made in I.A.No.19968 of 2010 in O.S.No.7970 of 2010 on the file of the XVIII Assistant City Civil Court, Chennai.

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For Petitioner : Mr. S.Subbiah, Senior Counsel
for Mr.T.Raja

For Respondent : No Appearance

ORDER

Though notice was duly served on the respondent and her name has been printed in the cause list, none appeared for the respondent.

2. Challenging the fair and final order passed in I.A.No.19968 of 2010 in O.S.No.7970 of 2010 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

3.1 The respondent-plaintiff filed the suit in O.S.No.7970 of 2010 under Order XXXVII Rule 1 of Civil Procedure Code for recovery of a sum of Rs.2,08,750/- together with interest.

3.2 It is the case of the respondent-plaintiff that she advanced a sum of Rs.1,25,000/- to the defendants and they executed a bond dated 19.05.2005 at Chennai for the due repayment of the loan amount. Subsequently, an endorsement has been made on 04.08.2007 at Madurai to the effect that the 2nd defendant paid a sum of Rs.5,000/- to the plaintiff.

3.3 The 1st defendant filed an application in I.A.No.19968 of 2010 to grant leave to defend the suit. In the affidavit filed in support of the application, the 1st defendant has stated that the document dated 19.05.2005 was not at all executed at Chennai and the said fact can be established on seeing the document itself for the reason that the stamp paper was purchased at Madurai. That apart, there is no specific recital in the document to establish that it was executed at Chennai. Even the part payment of Rs.5,000/- made on 04.08.2007 was also made only at Madurai and not at Chennai.

3.4 Though the plaintiff did not file any counter in I.A.No.19968 of 2010, the Trial Court, dismissed the application filed by the 1st defendant and decreed the suit.

4. As rightly contended by the 1st defendant, on a perusal of the document, it is clear that the stamp paper was purchased at Madurai and one of the attestor is also a resident of Madurai. That apart, both the defendants are residing at Madurai. Absolutely, there is no recital in the document to the effect that the document was executed at Chennai.

That apart, the defendants are also residents of Madurai. When the 1st defendant has taken a specific stand in the affidavit stating that the document was not at all executed at Chennai, the Trial Court should have considered the said issue and decided the matter. The Trial Court, in one paragraph, dismissed the application without giving any acceptable reasons.

5. On a perusal of the materials available on record, I am of the view that the defendants have got valid defence to contest the suit on merits including the issue with regard to the jurisdiction of the Court. The Trial Court has not given any finding with regard to the jurisdiction while decreeing the suit. That apart, whether the suit document dated 19.05.2005 can be construed as an agreement as contemplated under Order XXXVII of the Civil Procedure Code have to be decided only after a full-fledged trial.

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6. In such view of the matter, I am of the considered view that the defendants should have been given an opportunity to contest the matter on merits.

7. For the reasons stated above, the fair and decreetal order passed in I.A.No.19968 of 2010 in O.S.No.7970 of 2010 are set aside and the application in I.A.No.19968 of 2010 stands allowed. Consequently, the Judgment and Decree passed in O.S.No.7970 of 2010 are set aside and the suit in O.S.No.7970 of 2010 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, is restored to file. The XVIII Assistant Judge, City Civil Court, Chennai is directed to decide the suit in O.S.No.7970 of 2010 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

28.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

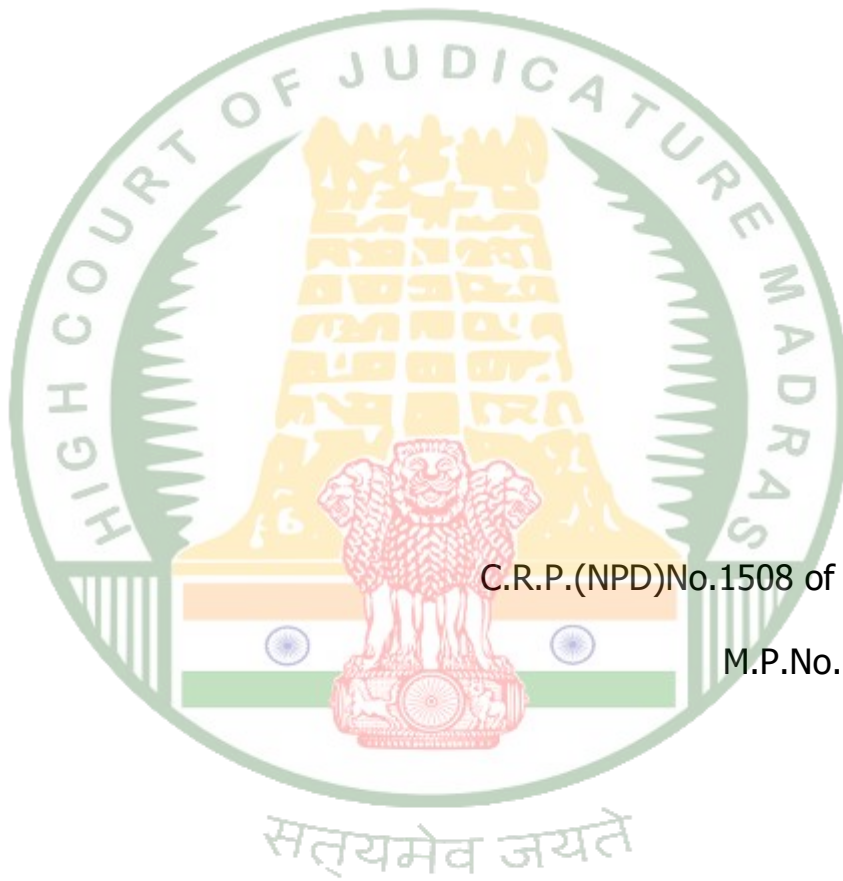
To

The XVIII Assistant Judge,
City Civil Court, Chennai.

C.R.P.(NPD).No.1508 of 2012

M.DURAISWAMY, J.

Rj



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