

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

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

CRP(PD).No.1001 of 2019

and

C.M.P.No.6640 of 2019

1.A.Ramasamy

2.R.Dhanalakshmi ..Petitioners/Defendants 3& 5

Vs

1.Sivakumar ..1st Respondent/Plaintiff

2.Raajaswamy Mills,
Represented by its Partner C.Rajamani,
W/o.Maniyakarar @ Chinnappa Gounder,
No.235/3, Periyamaniyakara Thottam,
Ammapalayam,
Palladam,
Tiruppur District – 641 664.

3.C.Rajamani,
Partner, Raajaswamy Mills,
W/o.Maniyakarar @ Chinnappa Gounder,
No.235/3, Periyamaniyakara Thottam,
Ammapalayam,
Palladam,
Tiruppur District – 641 664.

4.P.C.Selvakumar @ Selvam,
Partner, Raajaswamy Mills,
No.235/3, Periyamaniyakara Thottam,
Ammapalayam,
Palladam,
Tiruppur District – 641 664.

..Respondents 2 to 4/ Defendnats1, 2 & 4

This Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 13.02.2019 passed in I.A.No. 506 of 2018 in O.S.No. 12 of 2016 on the file of the learned I Additional District Court, Erode.

For Petitioner : Mr.K.Goviganesan

ORDER

The above Civil Revision Petition is filed challenging the order dated 13.02.2019 in I.A.No.506 of 2018 in O.S.No.12 of 2016, wherein, the learned First Additional District Judge, Erode has dismissed the application filed by the revision Petitioners to file an additional written Statement.

2 The contentions that were raised in the affidavit filed in support of the impugned petition is that the second defendant is the sister of the revision petitioners and the fourth defendant is the son of second defendant. On account of the certain disturbances caused by the fourth defendant and the illegal activities that were carried on by the fourth defendant, the business had stopped. It was their contention that no notice had been received by them and without informing them, the other defendants had made it appear

that revision petitioner had given instructions to file a written statement. The revision petitioners would plead fraud and would contend that to bring out this fraud, they had to file an additional written statement.

3 In the counter that has been filed to the said application, the plaintiff would contend that the revision petitioners were in the know how of all details of the suit. They would contend that the affidavit filed in support of the impugned petition contains false statement. The plaintiffs would contend that the summons had been served on the revision petitioners/defendants 4 & 5 and the fourth defendant, he had personally engaged a counsel, who had entered appearance for the other defendants and had been defending the case. In fact, the written statement filed by the second defendant had been adopted by the fourth defendant. Thereafter, the petition was allowed and an ex-parte decree came to be passed and all of them had together filed I.A.No. 416 of 2017 to set aside ex-parte decree, which was dismissed on 04.11.2017 and thereafter, allowed by orders in C.M.A No.6 of 2018 by this Court. After the ex-parte order was set aside, the revision petitioners had come forward with an application under Sections 45, 73, 73(A) of the Indian Evidence Act in I.A.No. 431 of 2018, which was dismissed by order dated 22.10.2018. After the dismissal of this application and without

cross-examining the witnesses, the revision petitioners had come forward with the impugned petition.

4 The suit has been filed on 11.12.2015 and the original written statement was filed by 2nd defendant-Raajaswamy Mills in O.S.No.12 of 2016 in September 2016. Taking note of all these factors, the learned First Additional Judge, Erode had dismissed the said application and the learned Judge had also referred to the earlier order of this Court, which had directed the disposal of the suit within a time frame. Challenging the said order, revision petitioners are before this Court.

5 As observed by the learned First Additional District Judge, Erode, the conduct of the revision petitioners indicates an attempt to protract the proceedings and reading of the Additional written statement would also show that no new plea has been taken, which would clearly confirm the above view taken by the Court. When this Court has directed disposal of the case within time frame, repeated applications being filed by the revision petitioners would only prevent the suit from coming to an end. The learned Judge has rightly dismissed the said application.

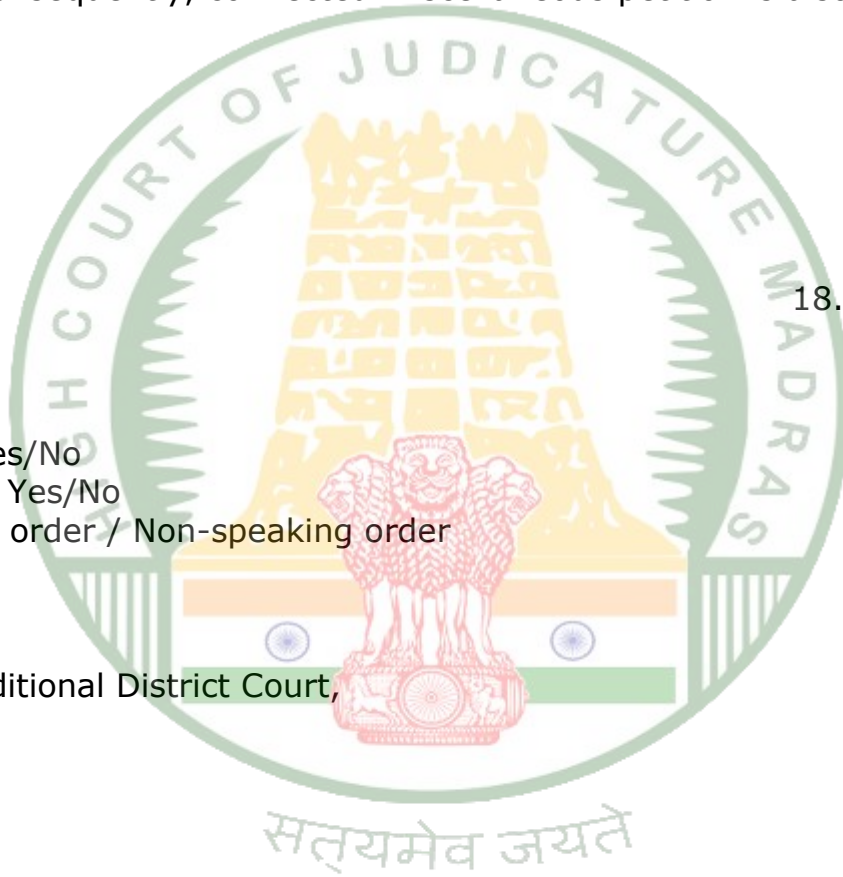
6 In the result, the Civil Revision Petition is dismissed and order passed by the learned I Additional District Court, Erode in I.A.No. 506 of 2018 in O.S.No. 12 of 2016 is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

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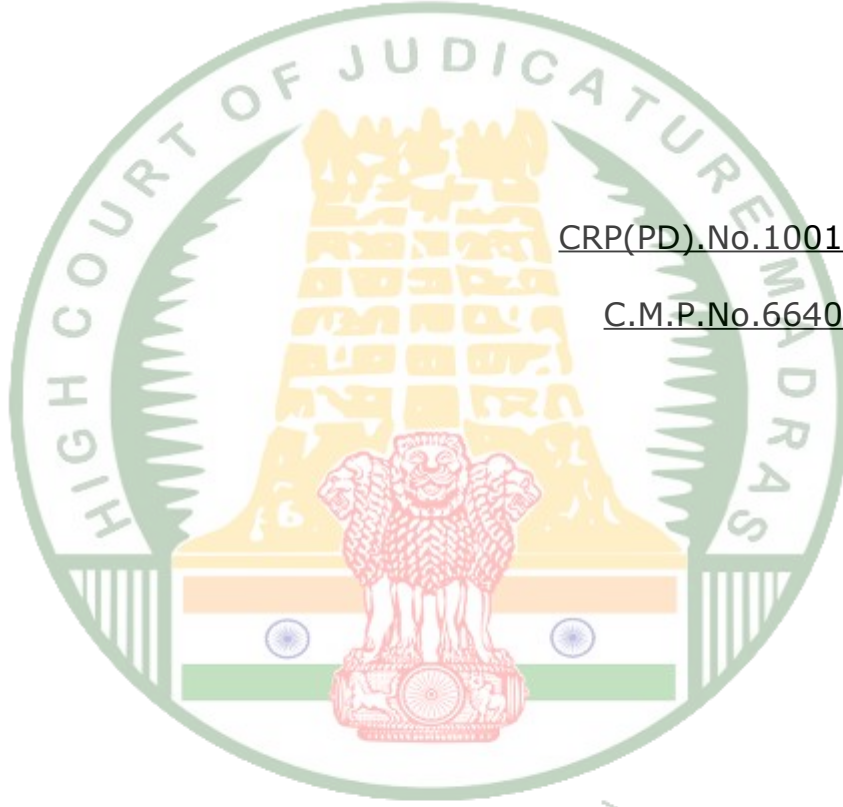
Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To
The I Additional District Court,
Erode.



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P.T.ASHA, J.
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