

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.978 of 2019 and
C.M.P.No.6491 of 2019

1.Zahir Hussain
2.Nargis Banu

... Petitioners

Vs.

Jubitha Banu

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 5.1.2019 in I.A.No.606 of 2018 in I.A.No.436 of 2018 in I.A.No.72 of 2018 in O.S.No.389 of 2013 on the file of I Additional District Judge, Coimbatore, Coimbatore District.

For Petitioners : Mr.R.Rajarajan

For Respondent : Mr.N.Elumalai
For Mr.J.Pothiraj

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.606 of 2018 in I.A.No.436 of 2018 in I.A.No.72 of 2018 in O.S.No.389 of 2013 on the file of the I Additional District Judge, Coimbatore, Coimbatore District, by order dated 05.01.2019.

2.I have heard Mr.R.Rajarajan, learned counsel for the petitioners as well as Mr.N.Elumalai, learned counsel for the respondent.

3.The respondent herein, who filed the suit in the Court below, had filed an Interlocutory Application i.e., I.A.No.436 of 2018, which was only to restore the earlier I.A.No.72 of 2018 filed by the respondent herein i.e., the plaintiff, to send a document for expert opinion to compare the signature of the 2nd defendant. The I.A.No.436 of 2018, to restore the earlier dismissed I.A.No.72 of 2018, also got dismissed on 13.11.2018. Therefore, in order to restore the same, the present I.A.No.606 of 2018 had been filed and the same had been allowed by the Court below, having aggrieved over the same, the present revision has been filed.

4.The learned counsel for the revision petitioners would submit that, the I.A.No.72 of 2018 has been dismissed and only to restore the same, I.A.No.436 of 2018 was filed and the same was also allowed for going to default and accordingly, it was dismissed on 13.11.2018 and therefore, the petitioner cannot have any justification to file the

present I.A.No.606 of 2018 to restore the said I.A.No.436 of 2018 and the same has been, without any reason, allowed by the Court below. Therefore, the said order is liable to be interfered with.

5.I have heard Mr.N.Elumalai, learned counsel for the respondent, who would submit that, I.A.No.436 of 2018 was posted for hearing on 13.11.2018 and on that day, on behalf of the petitioner i.e., the respondent herein, who filed the said I.A. to restore I.A.No.72 of 2018, had made submissions and arguments was heard in the morning session and for the argument of the respondents in that I.A., it was posted in the afternoon session, where the respondents had not argued the case and therefore, mistakenly, it has been dismissed on 13.11.2018, as if that the petitioner therein i.e., the respondent herein had been in default.

6.Therefore, the learned counsel for the respondent herein would submit that, the said aspect has been taken into account by the learned Judge and accordingly, in order to give a chance to the respondent herein, to pursue the said I.A. on merits, the present I.A.No.606 of 2018 has been allowed, through the impugned order, it does not require any interference from this Court.

7.I have considered the submissions made on either side and I have perused the impugned order passed by the Court below, where the learned Judge has recorded that on 13.11.2018, I.A.No.436 of 2018 was posted for arguments and in the morning session, applicant in that I.A. had argued, only for respondents arguments, it was posted in the afternoon. Though this stand had been taken by the applicant therein, who is the respondent herein, there has been no contra stand taken by the revision petitioners, who were the respondents in that I.A. and therefore, accordingly, the learned Judge has allowed it, by giving one more chance to the respondents to pursue the I.A.

8.After having gone through the said order passed by the Court below, I do not find any infirmity in the said order, as the reason attributable for dismissal of I.A.No.436 of 2018 on 13.11.2018 cannot be on the part of the respondent herein, who is the petitioner in the said I.A. and in that view of the matter, allowing the present I.A.No.606 of 2018, through the impugned order, is justifiable and therefore, this Court does not want to interfere in the impugned order.

9.In the result, this Civil Revision Petition fails and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.09.2019

Sgl

To

The I Additional District Judge,
Coimbatore,
Coimbatore District.

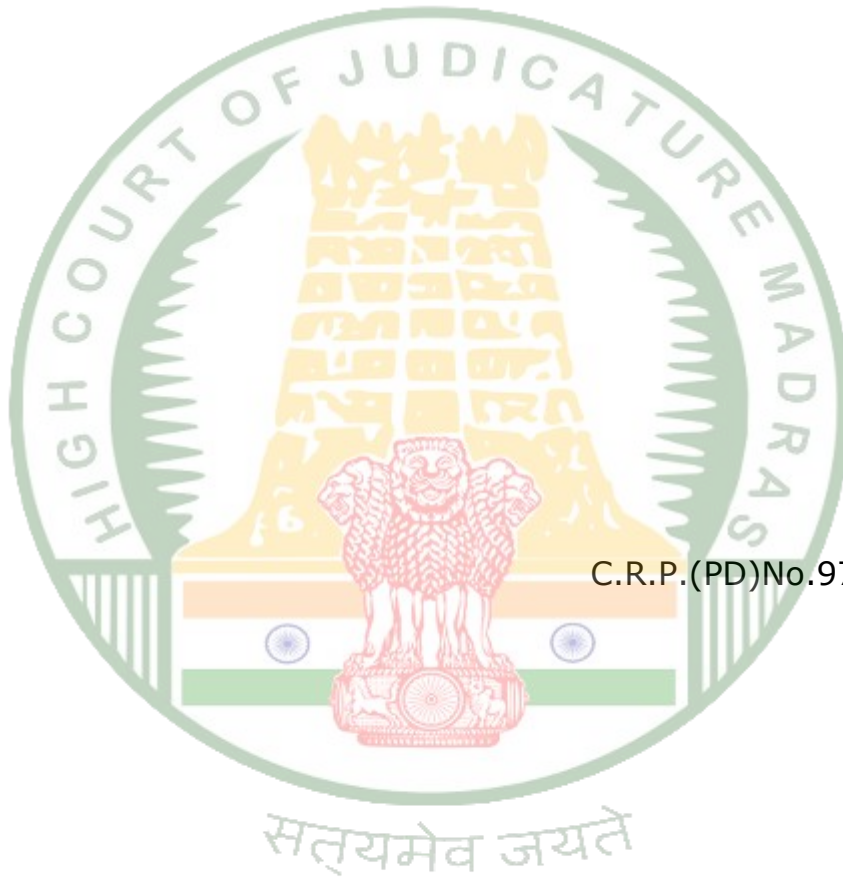


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R.SURESH KUMAR, J.

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