

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.1924 of 2014

V. Ganesan (Deceased)

2. Suriya Kumari

3. B. Mangaiyarkarasi

4. G. Narmatha

5. G. Sinthiya Rani

6. G. Venkata Kumar *

* Petitioners 2 to 6 brought on records as

Lrs of deceased 1st petitioner vide order of
Court dated 27.02.2017, by RMJ, made in

CMP No.2954 of 2017 in CRP 1924 of 2014. ... Petitioners

Vs

1. A. Chandrasekar

2. S. Narayanasamy

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the order in I.A. No.169 of 2004 does not debar the petitioner from challenging the validity of the judgment and order in O.S. No.27 of 2004. The dismissal of the suit default deprived the right of appeal of the petitioner as against the judgment and order in O.S. No.27 of 2004.

For Petitioners

: Mr.V. Rajendran

For respondents

: Mr.V. Ayyadurai for R1

ORDER

The instant Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging the order, dated 08.11.2004 passed in I.A. No.169 of 2004 in O.S. No.27 of 2004 on the file of the District Judge, Nagapattinam.

Brief facts leading to the filing of the instant Civil Revision**Petition are as follows :-**

2. The first petitioner is the plaintiff in the suit O.S. No.27 of 2004 on the file of the District Judge, Nagapattinam. He filed the suit for recovery of a sum of Rs.6,13,600/- against the respondents in O.S.No.27 of 2004. Originally, the suit was filed before the Sub Court, Mayiladuthurai and the suit was numbered as O.S.No.199 of 2001 and subsequently transferred to the District Judge, Nagapattinam, in view of change in pecuniary jurisdiction of the respective courts. The suit was filed by the first petitioner based on promissory notes allegedly executed by the respondents. The written statement was also filed by the respondents / defendants denying the execution of promissory notes and stating that all the documents filed along with the plaint by the petitioner are all fabricated documents. Issues were also framed

by the Trial Court and thereafter, the trial also commenced. When the matter was posted for arguments, the first petitioner, who is the plaintiff in the suit filed three applications to re-open and re-call PW1 as well as to condone the delay in filing the documents. The said applications were closed due to non-appearance of the first petitioner and ultimately, the suit was dismissed for default on 22.07.2004. In order to restore the suit, I.A. No. 169 of 2004 was filed. A counter affidavit was also filed by the respondents/defendants in I.A. No.169 of 2004. Ultimately, the Trial Court dismissed I.A. No.169 of 2004 on 25.08.2004. Aggrieved by the dismissal of I.A. No.169 of 2004, the first petitioner has preferred a revision under Article 227 of the Constitution of India in CRP (NPD) No.2134 of 2005 before this Court. By order dated 13.08.2007, the said Civil Revision Petition came to be dismissed by this Court on the ground that the first petitioner did not avail the several opportunities given by the Trial Court and this court held that the learned trial judge had rightly dismissed I.A. No.169 of 2004. Admittedly, the first petitioner has not challenged the order dated 13.08.2007 passed by this Court in CRP (NPD) 2134 of 2005 and therefore, the said order has attained the finality. But subsequent to the dismissal of the CRP (NPD) No.2134 of 2005, the first petitioner has preferred this revision under Article 227 of the Constitution of

India in CRP (NPD) No.1924 of 2014, challenging the original judgment and decree, dated 22.07.2004 in O.S. No.27 of 2004, dismissing the suit for default.

3. Heard Mr. V. Rajendiran, learned counsel for the petitioners and Mr.V. Ayyadurai, learned Senior counsel for the 1st respondent.

4. The first petitioner (since deceased) has filed this Civil Revision Petition, despite the fact that the earlier Civil Revision Petition filed by him, challenging the order passed by the Trial Court in I.A. No.169 of 2004 got dismissed on 13.08.2007 by the learned Single Judge of this Court. I.A. No.169 of 2004 was filed by the first petitioner to restore the suit, which was dismissed for default on 22.07.2004. It is also admitted by the learned counsel for the petitioners that the order, dated 13.08.2007 passed by this Court in CRP (NPD) No.2134 of 2005 has not been challenged before any higher forum. This being the case, the said order has attained finality. Having lost the Civil Revision Petition, the first petitioner has chosen to once again file this Civil Revision Petition, challenging the original

judgment and decree, dated 22.07.2004 passed in O.S. No.27 of 2004 by the Trial Court dismissing the suit for default. The learned counsel for the petitioners has produced various authorities, which are listed hereunder :

- 1) ***P. Ganesan versus UCO Bank rep. By its Branch Manager, Namagiripet Branch and two others*** reported in **(1998) (II) CTC 290**
- 2) ***Varadaraju versus C.Muthusamy*** reported in **1999 (2) MLJ 61**
- 3) ***S. Sundaram Pillai and another versus S. Kannan and another*** reported in **1996 (II) CTC 388**
- 4) ***Karthikeyan versus R. Vasanth and another*** reported in **2009 (4) CTC 462**
- 5) ***B. Janakiramaiah Chetty versus A.K. Parthasarathi and others*** reported in **(2003) 2 M.L.J. 186(S.C.)**
- 6) ***Raj Kumar Dey and others versus Tarapada Dey and others*** reported in **(1987) 4 SCC 398**
- 7) ***Shaikh Salim Haji Abdul Khayumsab versus Kumar and others*** reported in **(2006) 1 SCC 46**

5. But, none of the aforesaid authorities support the contention of the learned counsel for the petitioners to show that the earlier dismissal of the Civil Revision Petition, challenging the order passed in I.A. No.169 of 2004 by the Trial Court will not bar the first petitioner from filing a fresh Civil Revision Petition under Article 227 of the Constitution of India, challenging the original judgment and decree, dated 22.07.2004 passed in O.S. No.27 of 2004. The first petitioner, having failed in his attempt to restore the suit, which was dismissed for default, this Court is of the considered view that another Civil Revision Petition under Article 227 of the Constitution of India is not maintainable, challenging the original judgment and decree, dated 22.07.2004, by which, the suit was dismissed for default. The contention of the learned counsel for the petitioners at this stage to submit that the Trial Court ought not to have dismissed the suit for default, after the entire evidence was recorded by the Trial Court cannot be accepted, when the earlier revision has already been dismissed by this Court.

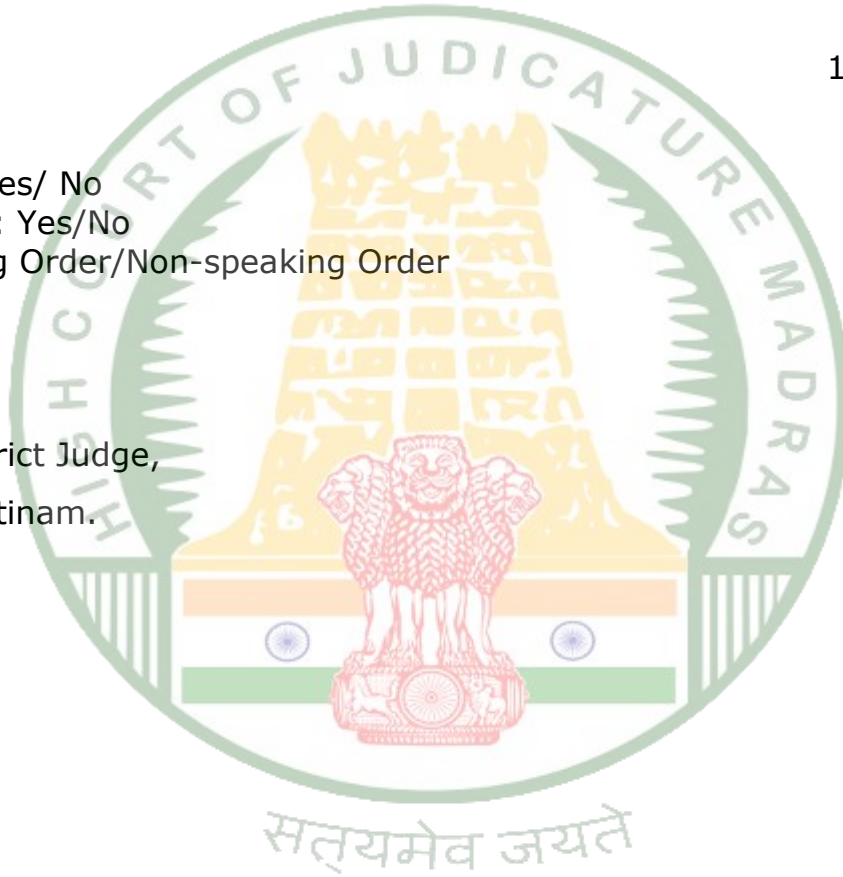
6. For the aforesaid reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court. Accordingly,

there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The District Judge,
Nagapattinam.



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ABDUL QUDDHOSE, J.

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