

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No.2532 of 2014

and

M.P.No.1 of 2014

C.Palanisamy

.. Petitioner

vs

1.R.Radhakrishnan

2.Sulochana Sundaram

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 04.07.2013 in I.A.No.824 of 2012 in O.S.No.778 of 2010 on the file of the First Additional Subordinate Court, Coimbatore in respect of the condition to deposit one-fourth of the claim amount.

For Petitioner : Mr.L.Mouli

For Respondents : No appearance

सत्यमेव जयते
ORDER

The present civil revision petition is directed against the fair and decretal order dated 04.07.2013 made in I.A.No.824 of 2012 in O.S.No.778 of 2010 passed by the First Additional Subordinate Court, Coimbatore.

2. The petitioner is the 6th defendant in O.S.No.778 of 2010. The petitioner acted as a Power of Attorney holder of the other defendants namely

1 to 5 in the above suit. The said suit was filed to recover a sum of Rs.8,64,600/- which includes a sum of Rs.2,64,600/- as interest at 18% from 19.01.2006.

3. Defendant Nos.1 to 5 represented by the 6th defendant, the petitioner herein agreed to transfer the suit schedule property to the plaintiff (respondents herein). The respondents allegedly paid a sum of Rs.6,00,000/- as advance in two installments later. However, the respondents came to know that the land had been acquired by the Tamil Nadu Housing Board. Hence they filed the suit to recover the same.

4. The petitioner/6th defendant filed written statement. The other defendants adopted the same.

5. The suit was however decreed exparte on 04.03.2011 as petitioner and other defendants remained exparte. Thereafter, the petitioner/6th defendant filed I.A.No.824 of 2012 under Order IX Rule (13) of C.P.C., to setaside the exparte decree. The said interlocutory application was contested by the respondents/plaintiffs.

6. By an order dated 04.07.2013, the said application was allowed subject to the payment of cost and deposit of one-fourth of the claim amount

before the Court of order on 31.07.2013. Meanwhile, the respondents-plaintiffs have also initiated execution proceedings.

7. The learned counsel for the petitioner submits that in the execution proceedings, the petitioner has already deposited approximately a sum of Rs.3,05,000/- which is more than the amount which was directed to be deposited on 04.07.2013. To that effect in an affidavit has been filed. However, since the deposit was not made on 04.07.2013 the aforesaid application filed and was dismissed.

8. There is no representation on behalf of the respondents/plaintiffs.

9. The petitioner/defendant has also obtained stay from this Court on 06.08.2014. The petitioner/defendant has shown bonafide in depositing the amount. Consequently, I am of the view that since the petitioner has complied with the order of the Court dated 04.07.2013 though belatedly, to meet the ends of justice, the Court below is directed to take up the case and dispose O.S.No.778 of 2010 within period of nine months from the date of communication of this order.

10. In view of the above, it is ordered as follows:

i) The impugned order dated 04.07.2013 passed in

I.A.No.824 of 2012 in O.S.No.778 of 2010 on the file of the First Additional Subordinate Court, Coimbatore is hereby modified by setting aside the date for compliance;

ii) Payment of amount Rs.3,05,000/- stands recorded. Execution proceedings pending shall abate and the amount of Rs.3,05,000/- and any other amount deposited by the petitioner shall be transferred to the credit of O.S.No.778 of 2010 and the disbursal of the amount shall be subject to the Judgement and decree to be passed in O.S.No.778 of 2010.

iii) The First Additional Subordinate Court, Coimbatore is directed to dispose O.S.No.778 of 2010 in accordance with law, after framing issues and conducting trial and hearing the parties within a period of nine months from the date of communication of this order.

The civil revision petition is allowed with the above observations. No cost. Consequently, the connected Miscellaneous Petition is also closed.

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Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
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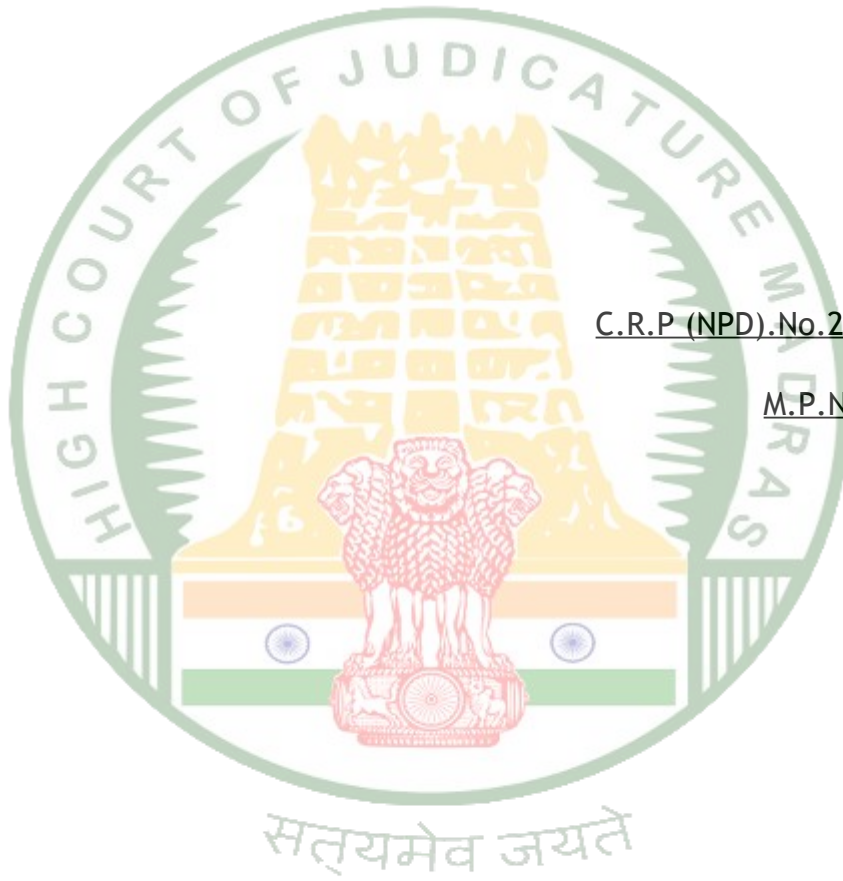
To
First Additional Subordinate Court,
Coimbatore.



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C.SARAVANAN,J.

kkd/arb



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