

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3939 of 2014
and M.P.No.1 of 2014

K.Selvaraj

.. Petitioner

Vs

1. A.R.Arumugham (died)
2. A.Gopalan
3. A.Manoharan (died)
4. A.Somasundaram
5. S. Devi
- 6.Latha
7. Deepak Raj
8. Yasodha

.. Respondents

[R6 to R8 brought on record as LRs of the deceased R3 viz., A.Manoharan, vide Court order dated 01.11.2019 made in CMP Nos.21767, 21769 & 21772 of 2019 in CRP (PD) No.3939 of 2014]

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decree passed in E.A.No.147/2013 in E.P.No.167/2007 in O.S.No.252/2004 dated 03.10.2013, on the file of the I Additional District Munsif, Erode.

For Petitioner : Ms.D.Pushpa
for Mr.M.Nandha Kumar

For Respondents : Mr.S.Kaithamalai Kumaran (for R2 & R4 to R8)

ORDER

The defendant in OS No.252 of 2004 on the file of the learned 1st Additional District Munsif, Erode, is the petitioner herein.

2. The father of the respondents viz., A.R.Arumugam, as a plaintiff, filed the suit in OS No.252 of 2004 on the file of the learned 1st Additional District Munsif, Erode, as against the petitioner herein seeking the relief of direction, directing the petitioner to pay to the plaintiff the sum of Rs.69,142.50p with subsequent interest on Rs.45,000/- at 18% per annum from the date of suit till the date of realisation. When the suit was posted for further proceedings, on 19.10.2005, for the reason that the petitioner has not appeared before the trial Court, the 1st Additional District Munsif, Erode, passed an exparte order against the revision petitioner and decreed the suit, as prayed for.

3. Based on the said decree, the father of the respondents / plaintiff filed an Execution Petition in EPR No.167 of 2007, praying to send notice to the judgment debtor/revision petitioner under Order XXI Rule 37 CPC and in default of payment send the revision petitioner to civil prison under

Sections 51 & 55 of CPC and to enable the decree holder / plaintiff to realise the amount due.

4. In the above Execution Petition, the revision petitioner herein filed an application in EA No.147 of 2013 under Order XX Rule 11(2) of CPC, seeking permission to make payment in monthly instalment i.e at Rs.1,000/- per month till realiation of the decree amount.

5. The learned 1st Additional District Munsif, Erode by order dated 03.10.2013, allowed the application and directed the revision petitioner to make payment of Rs.4,000/- per month till the date of realisation of the EP claim. Aggrieved over the same, the revision petitioner is with the present Civil Revision Petition, praying to set aside the fair and decreetal order dated 03.10.2013 passed in EA No.147 of 2013 in EP No.147 of 2007 in OS.No.252 of 2004 on the file of the learned 1st Additional District Munsif, Erode.

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6. Today, when the Civil Revision Petition came up for hearing, the learned counsel appearing for the petitioner present and made submission that since the revision petitioner is a daily wager, he is unable to pay

Rs.4,000/- per month, and without knowing the financial status of the revision petitioner, the Court below, has directed to pay Rs.4,000/- per month, till the date of realisation of the EP claim.

7. On the other hand, the learned counsel appearing for the respondents would contend that only to protract the proceedings before the trial Court, the petitioner has filed the present Civil Revision Petition.

8. Upon considering the arguments advanced by either side in the impugned order, the learned 1st Additional District Munsif, Erode has held that the petitioner/judgment debtor had defended the Execution Petition in all possible ways. Earlier, he had approached this Court by filing CRP No.4140 of 2019 and M.P.No.1 of 2007 against the dismissal order passed in IA No.83 of 2008, which was filed under Section 5 of the Limitation Act. The said Civil Revision Petition was dismissed by this Court on 16.03.2012 and only thereafter, the petitioner has pleaded no means and the same was already negated by this Court vide order dated 02.02.2013.

9. The said circumstances found in the impugned order would clearly establish the fact that the petitioner is not having any intention to realise

the decree. If really the petitioner is a daily wageer and also he had no means, it is not possible for him to approach this Court, again and again, in respect of decree amount of Rs.69,142.50p.

10. Moreover in the impugned order, the learned 1st Additional District Munsif, Erode, has allowed the petitioner to pay the decree amount in monthly instalments and directed only to pay Rs.4,000/- per month. Nowadays, even an unskilled labour is paid well and being a labour in a private loom, it won't be difficult for the petitioner, to pay Rs.4,000/- per month, towards the debt, which he had borrowed in the year 2001.

11. Considering the fact that the suit has been filed in the year of 2004 and approaching the Court in the year 2014, would go to show that the petitioner has attempted to protract the proceedings. Further, the decree amount to be realised and the conduct of the party, proves that the Civil Revision Petition has been filed by the petitioner, only to protract the proceedings. Therefore, this Court is convinced with the order passed by the learned 1st Additional District Munsif, Erode and is of the view that no prejudice is caused to the revision petitioner. Further, this Court is of the

view that encouraging this type of litigant, would lead the common man to loss of faith in the judicial system.

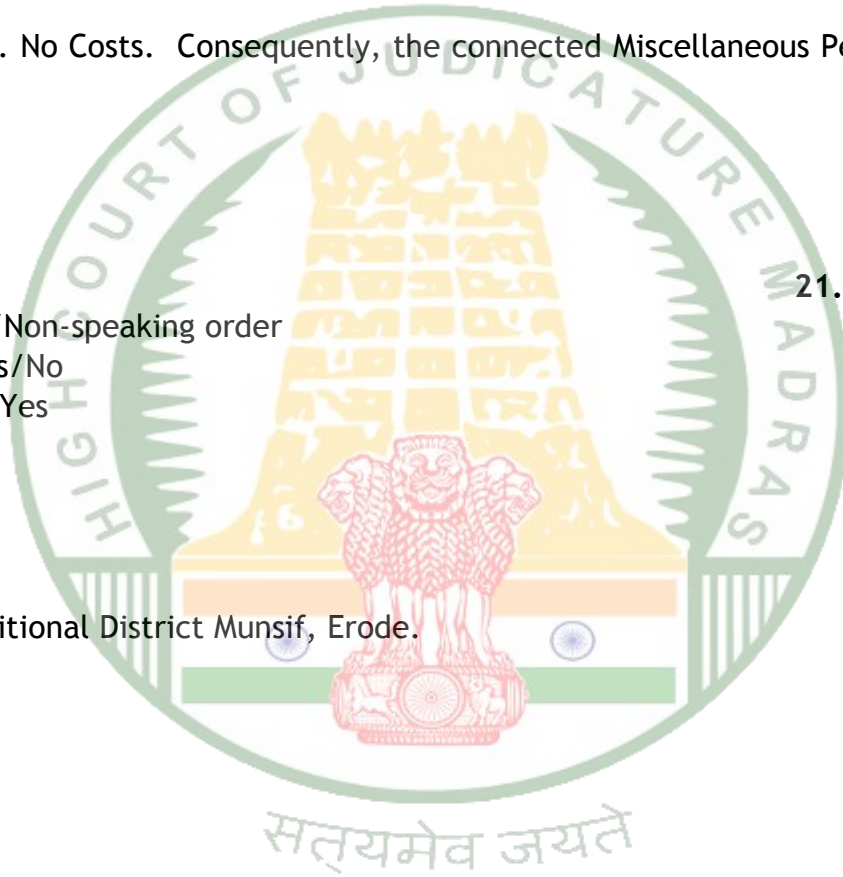
12. In the light of the above discussion, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

21.11.2019

Speaking/Non-speaking order
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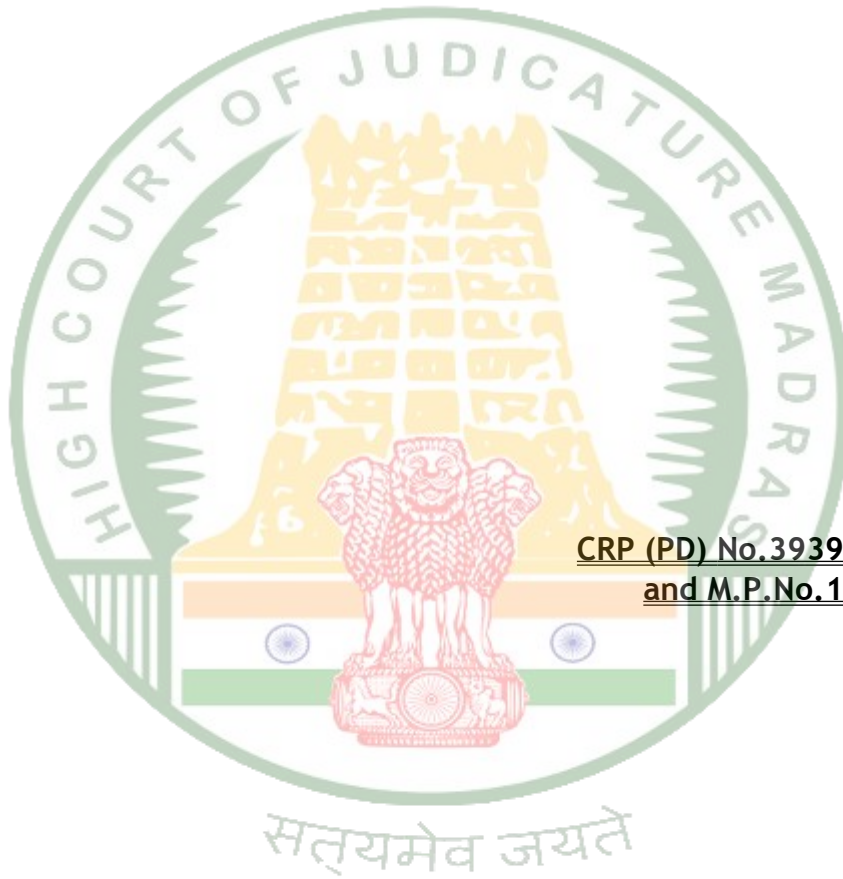
The I Additional District Munsif, Erode.



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R.PONGIAPPAN, J.,

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