

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.4213 of 2014 and
M.P.No.1 of 2014

1. Arumugam
2. Mrs. Parameswari ... Petitioners

v.

1. A. Shanmugam
2. The Tamil Nadu Slum Clearance Board,
Rep. By its Managing Director,
Kamarajar Salai, Chennai – 600 005.
3. The Corporation of Chennai,
Rep. By its Commissioner
Rippon Buildings,
Park Town,
Chennai – 600 003. ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 27.08.2014 made in I.A.No.11366 of 2014 in O.S.No.598 of 2014 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.J. Franklin

For Respondents : Mr. N.Sivaprakash – for R1
R2 & R3 – Ex parte_
ORDER

Challenging the fair and final order passed in I.A.No.11366 of 2014 in O.S.No.598 of 2014 on the file of the VII Additional Judge, City Civil Court, Chennai, the defendants 1 and 2 have filed the above Civil Revision Petition.

2.1 The 1st respondent-plaintiff filed the suit in O.S.No.598 of 2014 for declaration, mandatory injunction, permanent injunction and for other reliefs. Since the defendants 1 and 2 failed to file their written statement, they were set *ex parte* and an *ex parte* order was passed. Subsequently, the defendants 1 and 2 filed an application in I.A.No.11366 of 2014 to set aside the *ex parte* order dated 10.06.2014 by permitting them to file their written statement.

2.2 In the affidavit filed in support of the application, the defendants have stated that due to their old age they could not get more particulars for filing the written statement in time.

2.3 The application filed by the petitioners-defendants was not objected to by the plaintiff.

2.4 However, the Trial Court, dismissed the application finding that the defendants have not given sufficient cause for not filing the written statement in time.

3. When the 1st respondent-plaintiff had filed the suit for declaration, permanent injunction and for other reliefs, in the interest of justice, the Trial Court should have given an opportunity to the defendants to file their written statement and contest the suit. Instead, the Trial Court, dismissed the application closing the door of the defendants in contesting the suit.

4. The learned counsel appearing for the 1st respondent-plaintiff fairly submitted that an opportunity may be given to the petitioners-defendants 1 and 2 to file their written statement and contest the suit. The learned counsel also submitted that the plaintiff had also endorsed no objection in the application filed by the defendants 1 and 2 to

set aside the *ex parte* order. In spite of the same, the Trial Court had dismissed the application.

5. In these circumstances, I am of the considered view that the defendants 1 and 2 should be given an opportunity to file their written statement and contest the suit on merits and in accordance with law.

6. Accordingly, the fair and decreetal order passed in I.A.No.11366 of 2014 in O.S.No.598 of 2014 are set aside and the application in I.A.No.11366 of 2014 stands allowed. The Civil Revision Petition stands allowed. Since the suit is pending from the year 2004, I direct the VII Additional Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No.598 of 2014, within a period of four months, from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

1. The VII Additional Judge,
City Civil Court, Chennai,
2. The Tamil Nadu Slum Clearance Board,
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Kamarajar Salai, Chennai – 600 005.
3. The Corporation of Chennai,
Rep. By its Commissioner
Rippon Buildings,
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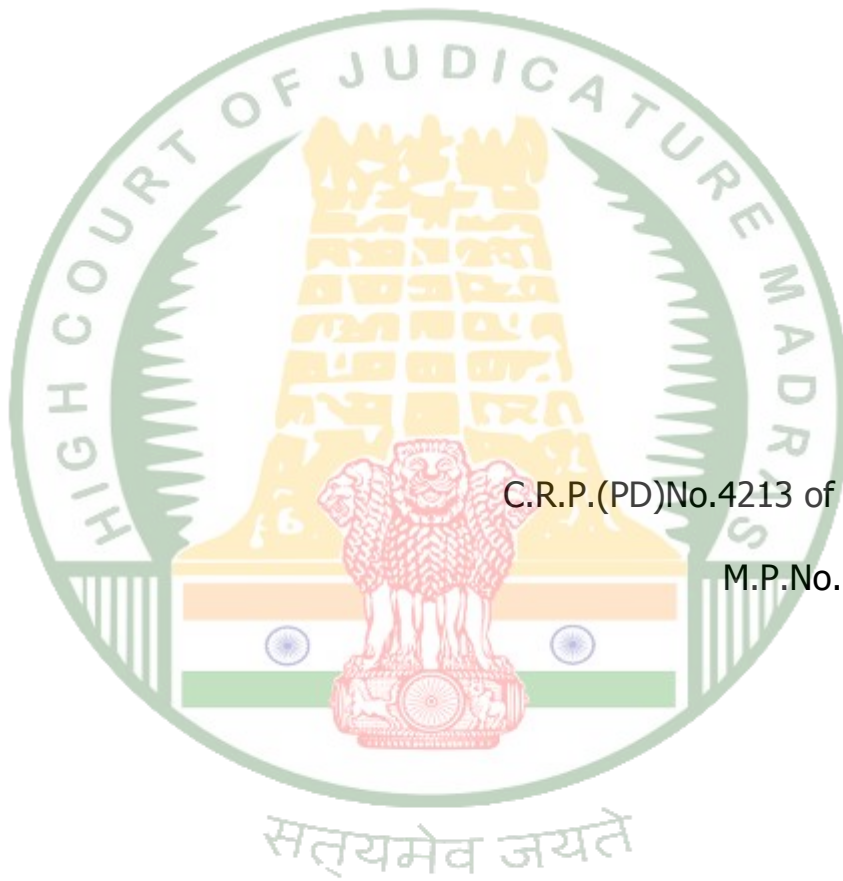


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M.DURAIWAMY, J.

Rj



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