

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2185 of 2019

and

C.M.P. No. 14084 of 2019

S. Vijayanandhan

... Petitioner

-Vs-

1. D. Shanthamani @ Santhi

2. D. Preepkumar

3. D. Sanju Vikashini

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.03.2019 passed in I.A. No. 1916 of 2018 in O.S. No. 456 of 2018 on the file of the learned II Additional District Judge, at Tiruppur.

For Petitioner : Mr. K. Myilsamy

For Respondents : Mr. Rajesh Ramanathan

ORDER

This Civil Revision Petition has been filed against the fair and and decretal order made in I.A. No. 1916 of 2018 in O.S. No. 456 of 2018 on the file of the learned II Additional District Judge, Tiruppur, by order dated 14.03.2019.

2. Before the Court below, in a suit for recovery of money an application was filed under Order XXXVIII Rule 5 of the Civil Procedure Code to get attachment before judgment in case of failure of furnishing security. The said application since was dismissed, as against which, the present revision petition has been filed by the petitioner / plaintiff against the respondents / defendants.

3. When the case came up for hearing, the respondents entered appearance and on 16.10.2019, this Court has passed the following order:-

"The learned counsel appearing for the respondents wants to take instructions and report before this Court, as to whether the respondents wants to file counter before

this Court, undertaking not to alienate the property in question, which is the subject matter before the Court below covered under the impugned order. Hence, he seeks a weeks accommodation.

Post the matter on 23.10.2019. There shall be an order of interim injunction till then."

4. Pursuant to the said order, today when the case is taken up for hearing, the learned counsel appearing for the respondents has filed an affidavit of the respondents, where *inter alia*, the respondents has stated at paragraph No. 4 which are relevant herein that, they would not alienate the suit property and the said content in the paragraph No. 4 of the undertaking affidavit is extracted herein:-

" 4. Without prejudice to their rights in the above suit and also on the merits of the present application under appeal, the respondents herein state, submit and reiterate that the petition schedule mentioned property sought to be attached by the petitioner herein stands mortgaged with LIC Housing Finance Limited, Coimbatore in 2011 under Loan A/c. No. 530600000111 and in view of the same, the respondents herein cannot alienate the property before closure of the said loan. The respondents further state and submit that they do not

have any intention of alienating the petition schedule mentioned property and without prejudice to their rights and defenses in the suit being O.S. No. 456 of 2018, hereby undertake not to alienate the petition schedule mentioned property till the disposal of the suit or any order passed by the Hon'ble Court, whichever is earlier."

5. In view of the said undertaking having given by way of the affidavit by the respondents / defendants before this Court, recording the same, this Court feels that, there can be no further grievances for the revision petitioner.

6. In that view of the matter, this Civil Revision Petition is disposed by recording the aforesaid undertaking given by the respondents and accordingly stands disposed of.

7. Taking into account the plea raised by both sides, since the suit is ripe for trial, the Court below is hereby directed to bestow the best attention and try to take up and decide the suit early preferably within a period of nine months from the date of receipt of a copy of this order.

8. With the above directions, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed. No costs.

30.10.2019

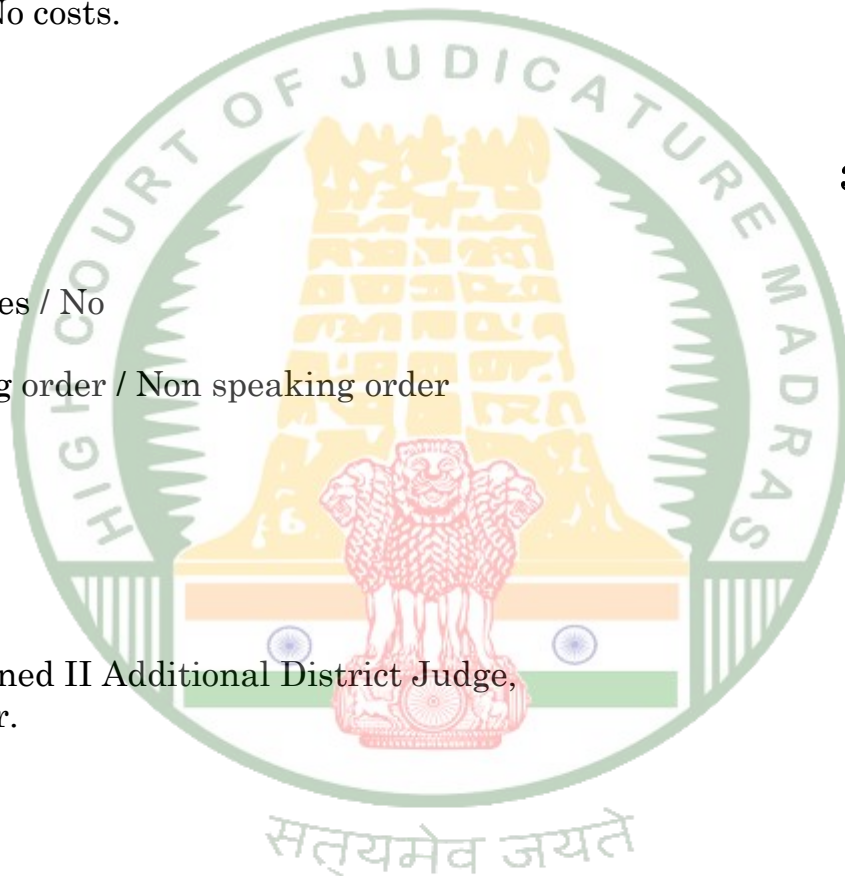
Index: Yes / No

Speaking order / Non speaking order

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To

The learned II Additional District Judge,
Tiruppur.

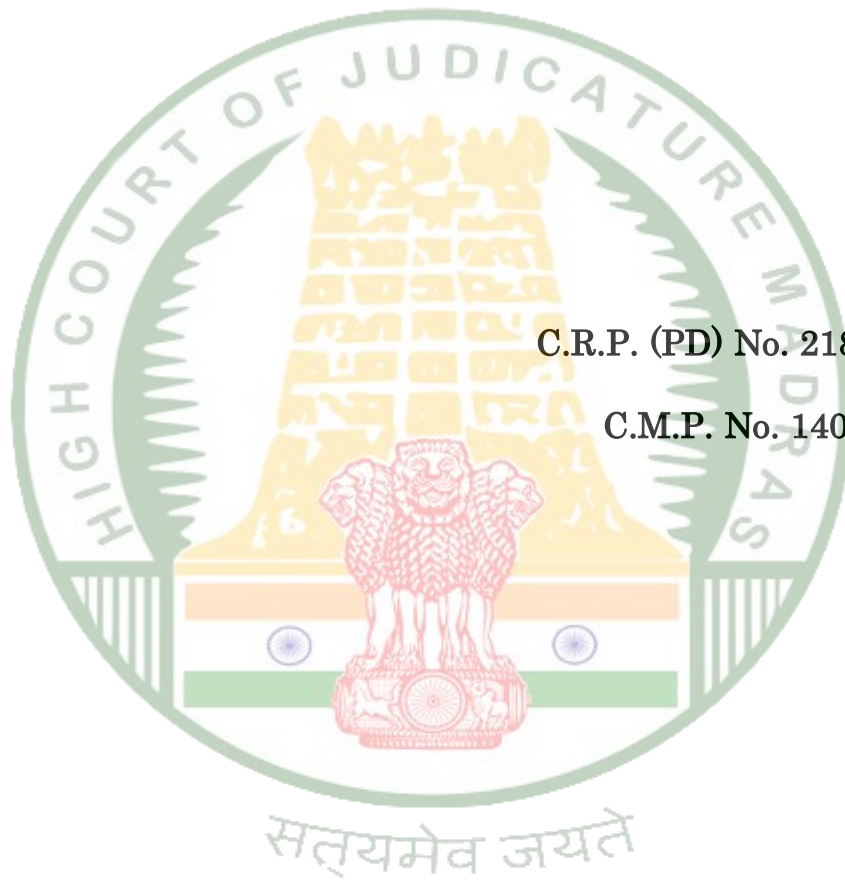


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R. SURESH KUMAR, J.

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