

Civil Miscellaneous Petition Nos. 14607, 14619, 14648, 14667,
14668, 14669, 14672 and 14674 of 2019

in
Original Side Appeal Nos. 32 and 33 of 2011

R. SUBBIAH, J

and

T. KRISHNAVALLI, J

(Order of the Court was made by **R. Subbiah, J**)

By a common Judgment dated 18.12.2013, the Division Bench of this Court allowed the aforesaid two Original Side Appeals by setting aside the order dated 15.12.2009 passed by the learned single Judge in Application No.; 3244 of 2008 in C.S. No. 564 of 2006, which was impugned therein. The operative portion of the Judgment dated 18.12.2003 passed by the Division Bench of this Court in the aforesaid two Original Side Appeals are re-produced hereunder:-

"46. In the result, the appeals are allowed and the impugned order in Application No. 3244 of 2008 dated 15.12.2009 is set aside and the following directions are issued:-

(i) The Application No. 3244 of 2008 shall stand restored and the same shall be decided on merits and in accordance with law.

(ii) The Advocate Receiver shall file an appropriate application in the suit claiming for such reliefs as he may deem fit and appropriate for the purpose of executing and implementing the consent decree dated 03.03.2008 and in such application the appellants shall be impleaded as respondents

(iii) On the Application being filed by the Advocate Receiver, the appellants as well as the respondents herein are entitled to file their counter and place all contentions as may be available to them under fact and law.

(iv) On counters being filed, the Court shall permit the parties i.e., the appellants as well as the respondents to lead oral as well as documentary evidence as they may deem fit

(v) Thereafter, the Application so filed by the Advocate Receiver shall be heard and decided on all issues that may be raised.

(vi) The appellants herein are directed to be impleaded for the purpose of giving a complete and effective and adequate adjudication of the matter in dispute to enable the Court to give

effect to the consent decree dated 03.03.2008.

(vii) The Hon'ble Supreme Court, during the pendency of Civil Appeal Nos. 447 and 448 of 2011, granted an interim order which was directed to be continued in the final order dated 12.01.2011. In the light of the order passed in these appeals, the interim order granted by the Honourable Supreme Court shall continue till the disposal of the Application to be filed by the Advocate Receiver. No costs."

2. It is evident from the Judgment dated 18.12.2013 passed by the Division Bench of this Court that certain directions were issued to the parties to the appeals besides liberty was granted to file counter affidavit and also to lead oral and documentary evidence in the suit viz., before the learned single Judge where the suit is pending. Further, directions were also given to the learned Advocate Receiver to file appropriate application before the learned single Judge claiming appropriate relief.

3. While so, after disposal of the Original Side Appeals, the present applications have been filed seeking various relief. We are at a loss to understand as to how these applications can be entertained by us when the matter is seized of by the learned single Judge, before whom the Suit as well as various other applications are pending. Notwithstanding the same, the petitioner has filed CMP No. 14607 of 2019 to appoint an Administrator to administer the affairs of the suit firm. CMP Nos. 14619 and 14648 of 2019 were filed to issue appropriate direction to the Administrator to be appointed to take possession of the schedule mentioned properties and to segregate the shares of the firm in dispute, respectively. CMP No. 14669 of 2009 was filed with a prayer to direct the Administrator to file a report of the rental income derived in the suit mentioned firm. These applications namely

CMP Nos. 14607, 14619, 14648 and 14669 of 2009 were filed in O.S.A. No. 33 of 2011. Similar applications are also filed in O.S.A. No. 32 of 2011. In all these applications, an innocuous prayer has been sought for to the effect that the respective relief can be granted in the aforesaid petitions "pending disposal of the petition". The normal rule is that an interim application or petition can be taken out by seeking an ancillary relief pending disposal of the main relief sought for in the appeal or suit as the case may be. As mentioned above, these petitions are filed long after the disposal of the Original Side Appeals. When the Original Side Appeals itself are not pending and they were allowed long back, these petitions cannot be entertained. Moreover, when already the Original Side Appeals have been allowed by the Division Bench of this Court and the learned single Judge is seized of the matter, this Division Bench will become *functus officio*. In other words, this Court has no jurisdiction to entertain these petitions and the relief, which are sought for in these petitions, can be prayed for only before the learned single Judge.

4. In this backdrop, we have heard the learned counsel on either side as well as the learned Advocate Receiver appointed by this Court. The learned counsel appearing for the petitioners would contend that in order to render complete justice to a litigant, technicalities cannot be allowed to stand in the way and therefore, notwithstanding the disposal of the Original Side Appeals, these petitions can be entertained by this Court. It is also contended that the learned Advocate Receiver did not do any work and therefore, the learned Advocate Receiver has to be removed and an Administrator has to be appointed.

5. In reply, the learned Advocate Receiver would contend that it is incorrect to state that he did not discharge his duties as an Advocate Receiver properly. He has also filed a Memo dated 31.10.2019 seeking additional remuneration stating *inter alia* that he may be discharged from the Receivership in the above suit. We hereby record the Memo dated 31.10.2019 filed by the Official Receiver.

6. The learned counsel for the contesting respondent would contend that when the Original Side Appeals are allowed long back, the present petitions are not maintainable. It is further stated that the contesting respondent has no objection for appointing a new Advocate Receiver in the place of the present Advocate Receiver, however, they have objection for appointing an Interim Administrator. Even otherwise, such relief of appointing a new Advocate Receiver can be made only before the learned single Judge and not before this Court.

7. Having regard to the above, we are of the view that when the Original Side Appeals have been allowed by this Court on 18.12.2013, this Court has no jurisdiction to entertain the present Civil Miscellaneous Petitions. The contention of the counsel for the petitioners that technicalities should not be permitted to stand in the way of a litigant to get complete justice cannot be countenanced inasmuch as the issue with regard to maintainability of these petitions, after disposal of the Original Side Appeals, is not a technical issue, rather it goes to the very root of the jurisdiction of this Court to entertain the present petitions. After disposal of the Original Side Appeals, this Court has no jurisdiction to entertain the present

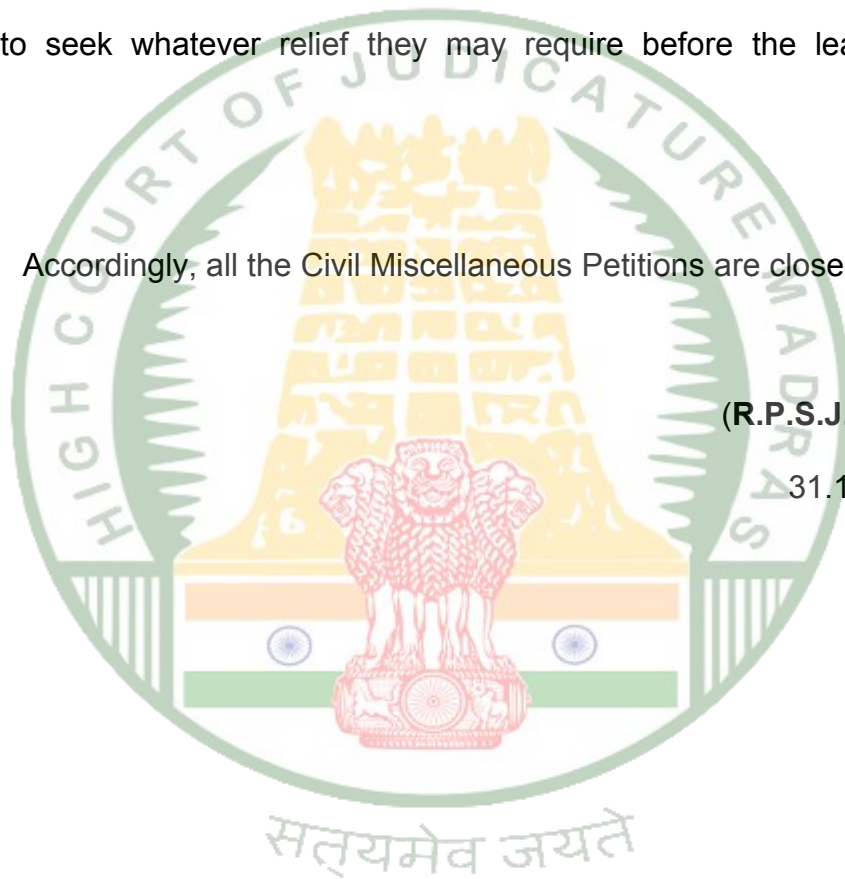
petitions at the instance of the petitioners. It is needless to mention that if any order is passed by the learned single Judge and any of the parties to such order is aggrieved in any manner, in such event, an appeal can be maintained before this Court. However, the present Civil Miscellaneous Petitions, which are filed after disposal of the Original Side Appeals, are not maintainable. Liberty is given to the petitioners to seek whatever relief they may require before the learned single Judge.

8. Accordingly, all the Civil Miscellaneous Petitions are closed.

(R.P.S.J.,) (T.K.J.,)

31.10.2019

rsh

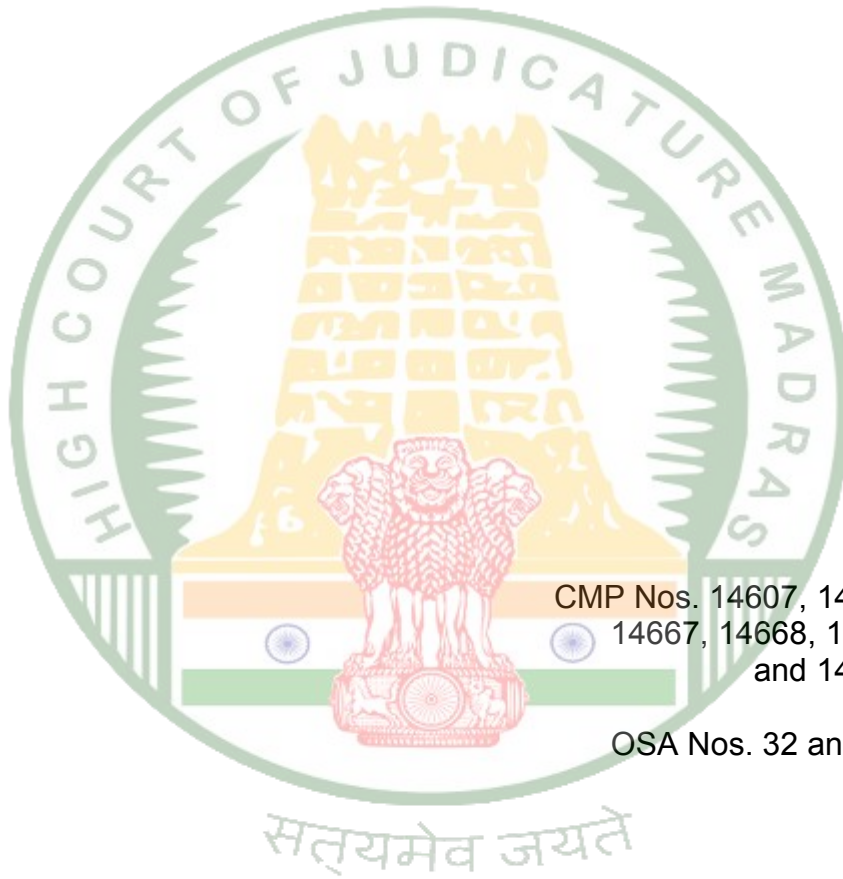


WEB COPY

CMP No. 14607 of 2009

R. SUBBIAH, J
and
T. KRISHNAVALLI, J

rsh



CMP Nos. 14607, 14619, 14648,
14667, 14668, 14669, 14672
and 14674 of 2019
in
OSA Nos. 32 and 33 of 2011

31-10-2019

WEB COPY