

C.M.P.No.16889 of 2019
in
C.M.A.SR.94283 of 2019

V.BHAVANI SUBBAROYAN, J.

The petitioner herein has come forward with this petition to grant leave to challenge the order passed by the trial Court in I.A.No.59 of 2013 in O.S.No.15 of 2011 on the file of the learned Additional District Court, Bhavani dated 19.02.2015.

2. In the affidavit filed in support of this petition, the petitioner has stated that his son filed a suit before the Additional District Court, Bhavani. Since his son was working in Saudi Arabia, he got Special Power of Attorney to conduct the case on behalf of his son. When the case was posted for trial on 17.07.2013, the petitioner could not appear before the trial Court. Hence, the case was dismissed. Subsequently, the petitioner filed an Interlocutory Application in I.A.No.59 of 2013 to restore the suit. The trial Court dismissed the said application on the ground that the Special Power of Attorney was not registered.

3. The petitioner has filed a petition to review the order of dismissal in I.A.No.26 of 2015 on the ground that on the date of

execution the document does not required to be registered. However, the same was also dismissed. Challenging the order of dismissal, the petitioner has filed a petition in CRP. No.1835 of 2019 before this Court.

4. During pendency of the Civil Revision petition, the petitioner executed the registered Special Power of Attorney. Since the initial power of attorney is super seeded by a registered General Power of Attorney. The petitioner has come forward with this petition seeking leave to challenge the order passed by the trial Court in I.A.No.59 of 2013 in O.S.No.15 of 2011.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The trial Court has dismissed the I.A.No.59 of 2013 without even giving opportunity to the petitioner to file a Special Power of Attorney. It is not the case of the respondent that the Special Power of Attorney was not executed by the son of the petitioner. That being the case, the trial Court ought to have taken the Special Power of Attorney on file and allowed the petitioner to argue the matter and restore the suit dismissed for default.

7. This Court is convinced with the reason mentioned in the affidavit in support of the petition.

8. The petitioner is granted leave to challenging the order passed by the trial Court made in I.A.No.59 of 2013 in O.S.No.15 of 2011 on the file of the Additional District Court, Bhavani and this petition is allowed.

rli

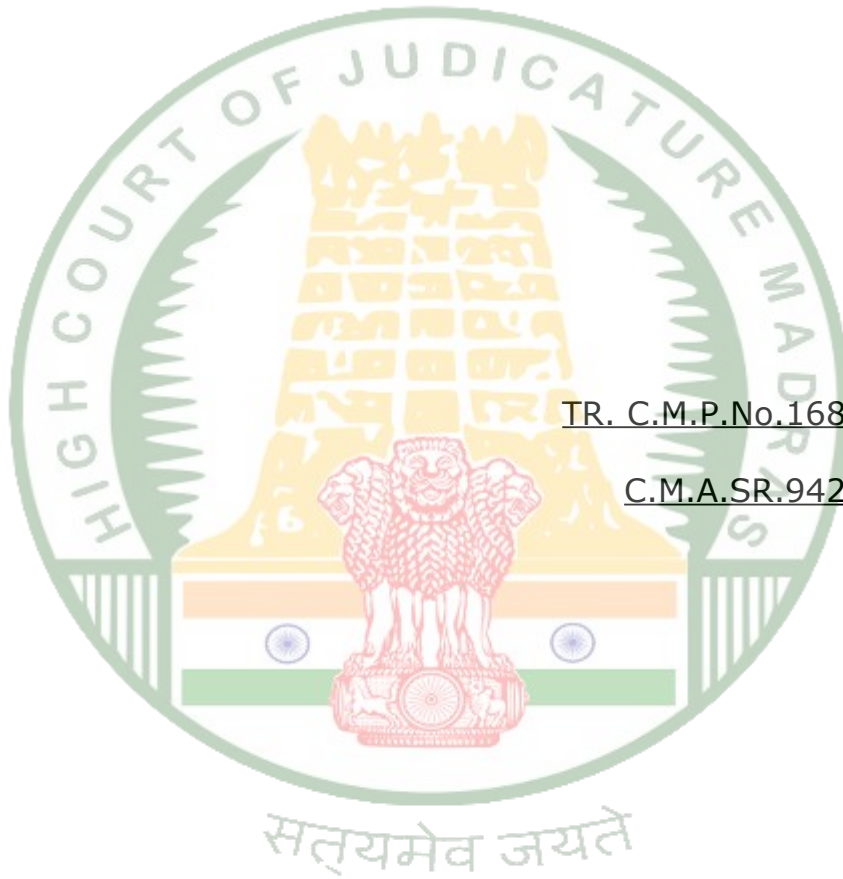
09.09.2019



WEB COPY

V.BHAVANI SUBBAROYAN, J.

rli



TR. C.M.P.No.16889 of 2019
in
C.M.A.SR.94283 of 2019

09.09.2019

WEB COPY