

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2862 of 2019

and

C.M.P. No. 18696 of 2019

G.S. Suresh

... Petitioner

Vs.

1. Annamalai

2. Shanthi

... Respondents

Prayer : Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 20.07.2018 passed by the Learned District Munisff, Tiruvarur, in I.A. No. 63 of 2018 in O.S. No. 11 of 2018.

For Petitioner

: Mr. B. Hari Krishnan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed by the Learned District Munisff, Tiruvarur in I.A. No. 63 of 2018 in O.S. No. 11 of 2018, by order dated 20.07.2018.

2. The said I.A. was filed by the plaintiffs in the suit, who are the petitioners therein and who are the respondents herein under Order XXXIX Rule 1 of Civil Procedure Code to seek for some prohibitory orders on merits. The said I.A. was allowed by the said impugned order dated 20.07.2018 by the Court below. Assailing the same, the present revision has been filed.

3. The said impugned order made under Order XXXIX Rule 1 of Civil Procedure Code is an appealable order under Order XLIII of the Civil Procedure Code and without availing the appellate remedy provided under the statute, the revision petitioner has straight away approached this Court, by invoking superintending power of this Court under Article 227 of the Constitution of India.

4. I have heard Mr. B. Hari Krishnan, learned counsel appearing for the petitioner, who would submit that, though there is an alternative remedy by way of appeal against the impugned order, since

there is error apparent on the face of the record and it is completely an erroneous order, the said appellate remedy may not stand in the way by approaching this Court invoking Article 227 of the Constitution of India.

5. No doubt, availability of alternative remedy or appellate remedy may not preclude a litigant to approach the High Court under Articles 226 and 227 of the Constitution of India, but there are special cases, where there must be a compelling circumstances for the litigant to approach the High Court to seek remedy invoking Article 227 of the Constitution of India. Like that, the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India also cannot be invoked in all cases, where statutory appellate remedy is available.

6. This Court, after having gone through the order impugned, is of the view that, as against the present impugned order, the petitioner can very well invoke Order XLIII of Civil Procedure Code to file an appeal. It is an appellable order before the First Appellate Court,

where there is no such extraordinary situation available to the petitioner to invoke straight away Article 227 of the Constitution of India.

7. In that view of the matter, this Court is not inclined to entertain this revision, on the only ground of non-exhausting of appellate remedy and therefore, this Court is inclined to dismiss this Civil Revision Petition.

8. However, once the petitioner approaches the First Appellate Court, by way of appeal under Order XLIII of Civil Procedure Code, the First Appellate Court shall not raise any technicality with regard to the limitations and in that case, if a reasonable cause is given, apart from the period where this revision is filed and was pending before this Court, the same can be accepted and the appeal can be entertained.

WEB COPY

9. With these observations, this Civil Revision Petition is dismissed. The Registry is directed to return the impugned order to the

counsel, after getting proper acknowledgment, forthwith. Consequently, connected Miscellaneous Petition is closed. No costs.

05.09.2019

Index: Yes / No

Speaking order / Non speaking order

vji

Note: Issue order copy by 06.09.2019.

To

The Learned District Munisff,
Tiruvarur



WEB COPY

C.R.P. (PD) No. 2862 of 2019

R.SURESH KUMAR, J.

vji



C.R.P. (PD) No. 2862 of 2019
and
C.M.P. No. 18696 of 2019

WEB COPY

05.09.2019