

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.(PD).No. 3004 of 2019

and

C.M.P.No. 19396 of 2019

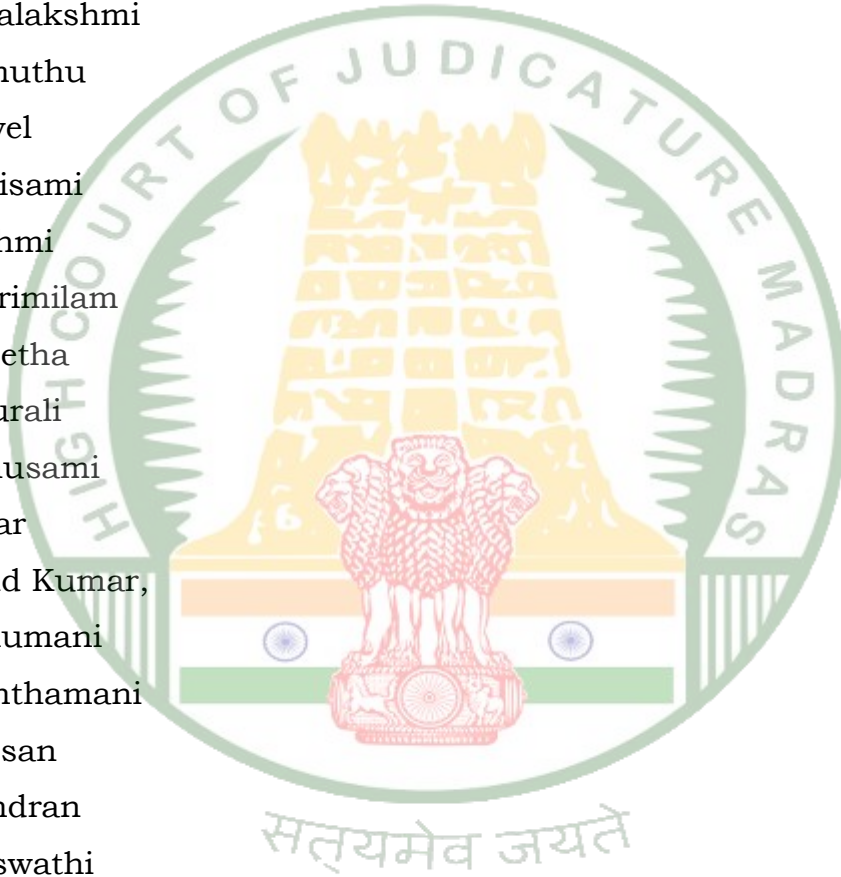
Parshwa Reality,
Partnership Firm
Mrs.BharathBharathtshath,
Rep. by its partner Rajendran,
No.535/35, Ramanis Mayuri,
Thudiyalur Road, Chinnavedampatti Post,
Coimbatore.

... Petitioner

-Vs-

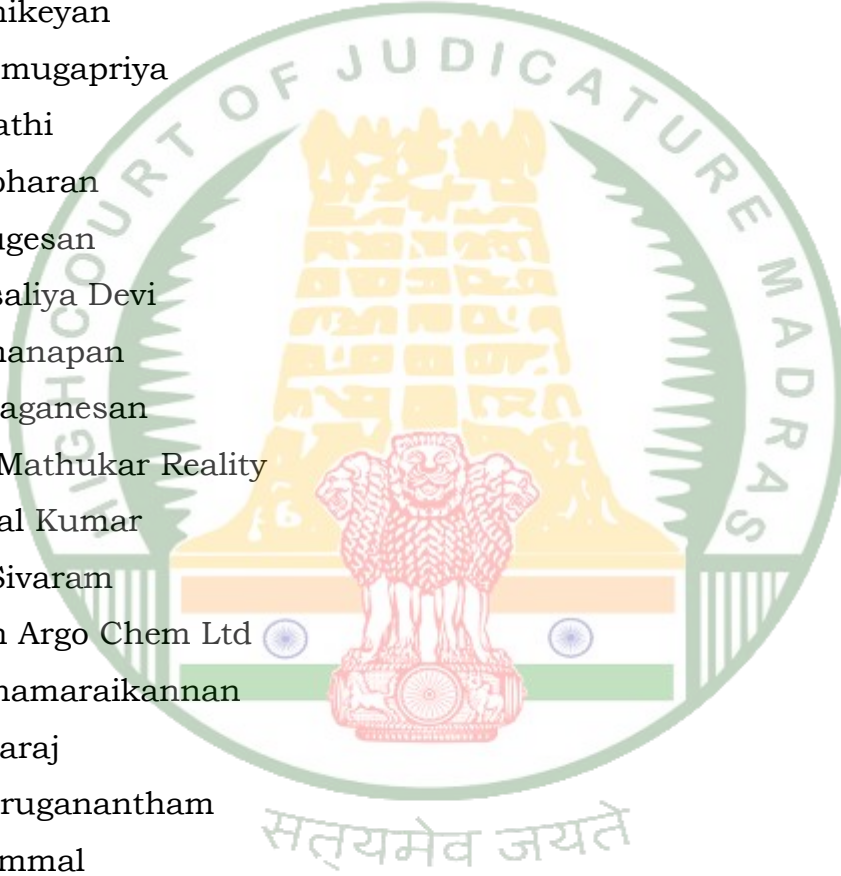
1. N.Girinathan,
2. N.Krishnamoorthy
3. Mahendran
4. Chitra,
5. N.Manickam
6. Thanam
7. Palaniammal
8. Amsaveni
9. Mani
10. Perumal
11. Vadivel
12. Thangavelu
13. Pappa @ Muthulakshmi
14. Nageswari

15. Sakthivel
16. Krishnaveni
17. Peychimuthu
18. Kannammal
19. Amaravathi
20. Valliyammal @ Krishnavalli
21. Vijayalakshmi
22. Kalimuthu
23. Vadivel
24. Duraisami
25. Lakshmi
26. M.Parimilam
27. M.Geetha
28. M.Murali
29. Muthusami
30. Kumar
31. Anand Kumar,
32. N.Velumani
33. S.Santhamani
34. Ganesan
35. Rajendran
36. Saraswathi
37. Rajendran
38. Sagunthala
39. Shanthi
40. Jamuna
41. Ramya
42. Ranjith



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43. Rajkumar
44. Malika
45. Parameshwari
46. Kannammal
47. Karunamurthy
48. Latha
49. Karthikeyan
50. Shanmugapriya
51. Sumathi
52. Manoharan
53. Murugesan
54. Gowsaliya Devi
55. Padmanapan
56. K.Sivaganesan
57. M/s.Mathukar Reality
58. Nirmal Kumar
59. K.V.Sivaram
60. Hiran Argo Chem Ltd
61. Senthamaraikannan
62. Thanaraj
63. P.Muruganantham
64. Nagammal
65. Jayasundari
66. R.Manokari
67. Suguneswari



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... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India praying to Strike off the Complaint filed in O.S.No. 440 of 2019 on the file of the Principal District Court, Coimbatore.

For Petitioners : Mr.T.P.Manoharan
Senior Counsel
for Mr.Sithirai Anandam

ORDER

This Civil Revision Petition has been filed to strike off the Plaint filed in O.S.No. 440 of 2019 pending on the file of the Principal District Court, Coimbatore.

2. Heard Mr.T.P.Manoharan, learned senior counsel appearing for the revision petitioner.

3. The learned senior counsel appearing for the revision petitioner would submit that, this Civil Revision Petition has been filed to call for the records in respect of suit in O.S.No. 440 of 2019 filed before the learned Principal District Court, Coimbatore and strike off the plaint filed in the suit, by raising various reasons and grounds.

4. It is to be noted that, though the revision petitioner / defendant is entitled to file appropriate application to reject the plaint before the trial Court, in the present case, without exhausting the same by filing an appropriate application under Order VII Rule 11 CPC, the revision

petitioner has approached this Court directly under Article 227 of the Constitution invoking the superintending power of this Court.

5. In this context, it is to be noteworthy to mention that, the Courts have taken the view and it is almost a settled principle that, wherever there is an appellate provision, hierarchy of appellate authorities are available, the same should be invoked, without which parties cannot be relegated to approach this Court directly. Very particularly in the context of civil remedy, for which parties approached the Civil Court, there is an exhaustive procedure contemplated under CPC.

6. Order VII Rule 11 of CPC makes it clear that, what are all the grounds under which defendants can seek for rejection of plaint from the trial Court and based on those grounds such kind of application can be filed by the defendant in the suit. Without filing any such application, if the defendant chosen to approach this Court, as in the present case, under Article 227 of the Constitution, that kind of practise cannot be entertained.

7. In respect of the aforesaid principle, which has already been settled, in a recent decision, the Hon'ble Apex Court has not only reiterated but also amplified that, in so far as in respect of cases falling under the category, where issues pending before the Civil Court under CPC, such remedy has to be availed of by the party and therefore without availing such remedy under CPC, the party cannot approach the High Court, as such availability of alternative or appellate remedy under CPC can be construed as a near total bar.

8. In order to have a easy reference of the said principle as has been reiterated in the recent decision in **2019 (5) C.T.C.696 (Virudhunagar Hindu Nadargal Dharma Paribala Sabai and Others -Vs- Tuticorin Educational Society and Others**", the following paragraphs are usefully extracted hereunder :

“ 13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and

other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai, pointed out in Radhey Shyam Vs. Chhabi Nath that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

9. In view of the said law having been declared by the Hon'ble Apex Court, this Court while exercising power under Article 227 of the Constitution of India cannot entertain a revision petition for the reason that there being a specific remedy available under Order VII Rule 11 CPC.

10. When that being the position, without making an attempt to that effect, by filing an application under Order VII Rule 11 CPC, the petitioner cannot invoke the superintending power of this Court under Article 227 of the Constitution of India.

11. In view of the above, this Court is not inclined to accept this Revision Petition for the prayer sought for herein. Hence, the Civil Revision Petition is dismissed. However, the dismissal of this revision petition will not anyway preclude the revision petitioner to approach the Court concerned by filing an application under Order VII Rule 11 CPC in O.S. No. 440 of 2019. On such petition being filed, the lower Court shall take up the application and dispose of the same on merits and in accordance with law as expeditiously as possible preferably within a period of two months from the date of numbering of such application to

be filed by the Revision Petitioner. Consequently, connected miscellaneous petition is closed. No costs.

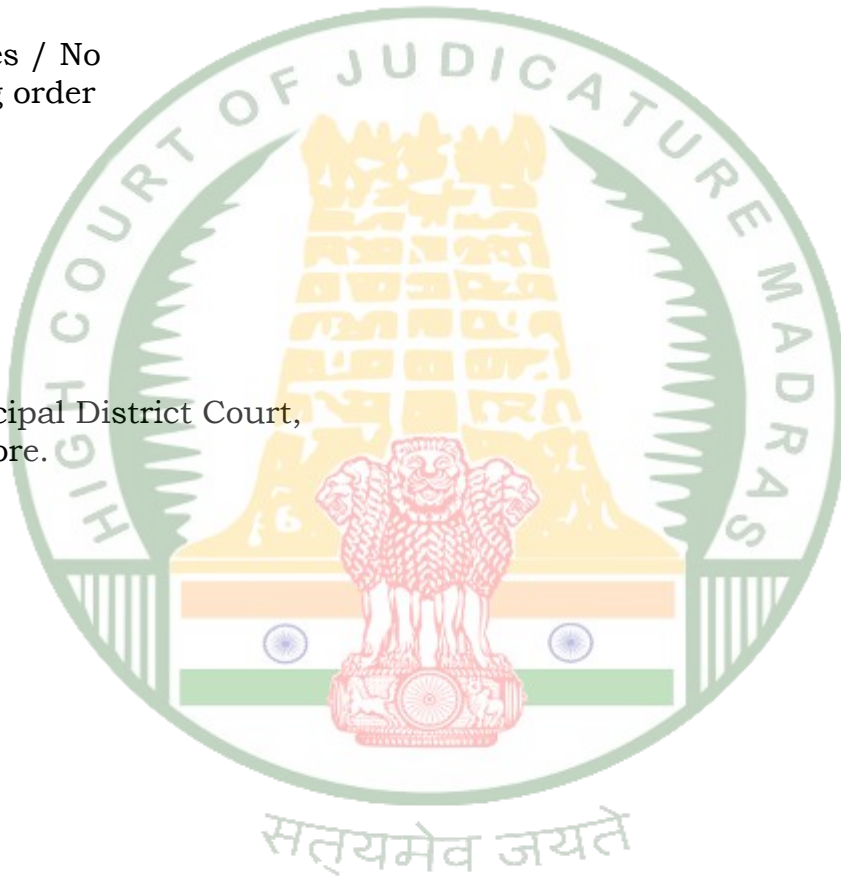
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Index: Yes / No
Speaking order

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To

The Principal District Court,
Coimbatore.



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R. SURESH KUMAR, J.

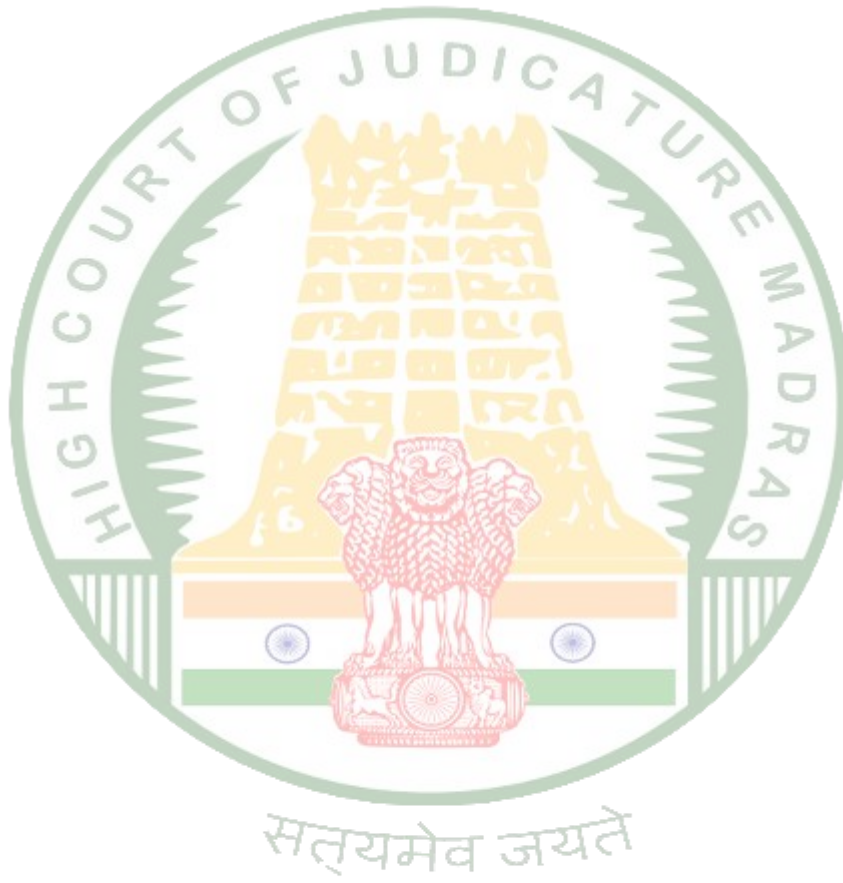
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