

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.2738 of 2017
and
C.M.P.No.12979 of 2017

E.Iyyer

...Petitioner

Vs

B.Venkateswaralu

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.07.2014 in I.A.No.5065 of 2014 in O.S.No.6243 of 2013 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Nithinandam

For Respondent : Mr.B.Venkateswaralu
Party-in-person

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.5065 of 2014 in O.S.No.6243 of 2013 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai. The said I.A.No.5065 of 2014 is an application filed by the revision petitioner seeking leave to defend the above suit. Leave has been denied by the learned XVIII Assistant Judge, City Civil Court, Chennai, and consequently, the suit has also been decreed as *ex parte*. The decree has now been, put in execution by the plaintiff/decreed holder.

2. In the leave to defend the application, the learned counsel for the petitioner has stated that he was unable to get the papers from the counsel for the plaintiff since the learned counsel who had originally appeared for and on behalf of the plaintiff refused to receive the notice. Thereafter, he came to know that the counsel has been changed and once again notice has been sent to the new counsel. He then look out the impugned application

and the plea of the defendant/revision petitioner is that the entire transaction is barred by limitation and also the suit does not fall within the ambit of a summary suit. Despite showing the triable issues, the learned Judge has proceeded to dismiss the application only on the ground that the defendant has accepted the receipt of a sum of Rs.4,00,000/- on 18.07.2008. This Court is of the opinion that this is an erroneous presumption and the acceptance of the receipt of money cannot be construed that the defendant from raising any other defence.

3.The order is therefore set aside and taking note of the provision of Order 37 Rule 3 of the Code of Civil Procedure, the suit is restored to file and the revision petitioner is permitted to file his Written Statement and the suit is directed to be disposed of within a period of six months from the date of receipt of a copy of this order. However, considering the fact that the payment has not been made and the advance amount has not been returned, despite the statement of the defendant that the plaintiff

had not come forward to perform the part of contract, conditional leave is granted in that the defendant/revision petitioner shall deposit a sum of Rs.5,76,000/- together with interest @6% per annum from the date of numbering of the suit till the date of payment to the credit of O.S.No.6243 of 2013 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai, within a period of twelve weeks from the date of receipt of a copy of this order. In the event of non deposit as stated above, the leave granted shall automatically stand withdrawn. It is also made clear that the plaintiff shall not withdraw the abovesaid sum till the disposal of the suit. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

13.02.2019

Index : Yes/No

Internet : Yes/No

mps

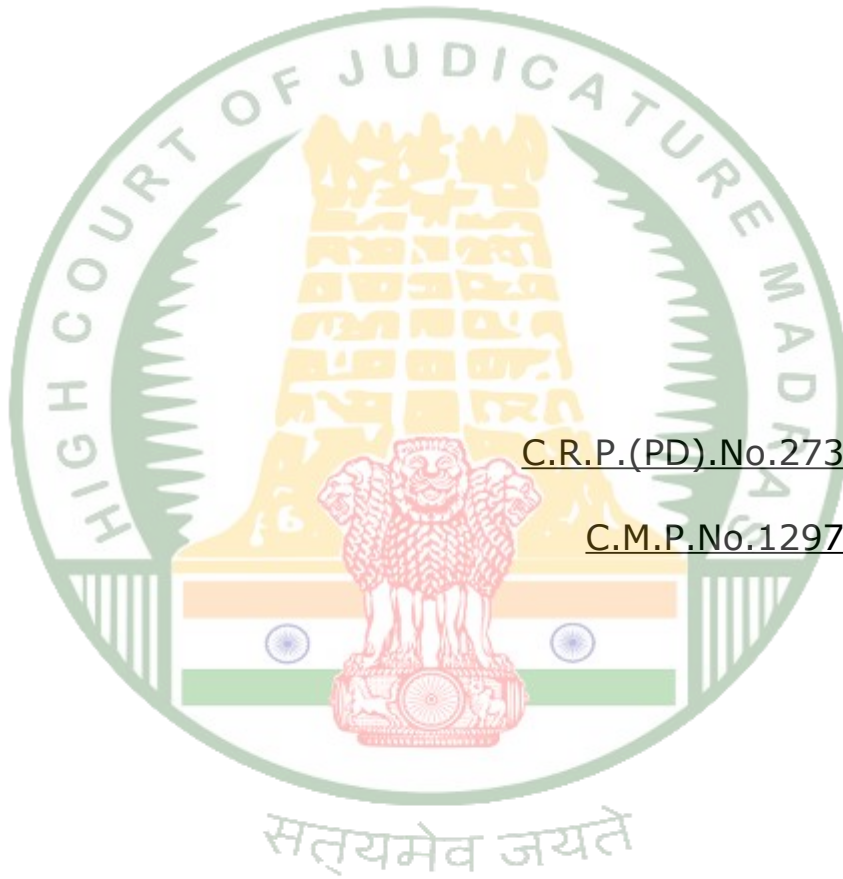
To

The XVIII Assistant Judge,
City Civil Court,
Chennai.

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P.T. ASHA, J,

mps



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