

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P (PD).No.3223 of 2018

and

C.M.P.No.18397 of 2018

M.Palani, Age 45 years,
S/o.Mannar,
New No.9, Old No.5-A,
Gulam Abbas Ali Khan 10th Street,
Thousand Lights, Chennai 600 006.

... Petitioner

Vs.

R.Devi, Age 37 years,
W/o.Ramu,
New No.9, Old No.5-A,
Gulam Abbas Ali Khan 10th Street,
Thousand Lights, Chennai 600 006.

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 12.01.2018 in C.M.P.No.17 of 2017 in A.S.No.212 of 2015 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.Satheesh Kumar.P.

For Respondent : Mr.A.Mariappan

ORDER

The main ground raised by the petitioner herein is that in spite of the respondent endorsing no objection in the application filed under Order 16 Rule 1 (3 & 4) r/w.26, 10(3) of CPC, seeking permission to permit the petitioner to examine the Advocate Commissioner and the licensed surveyor, the appellate Court had rejected the requests for examining the licensed survivor, while allowing the examination of the Advocate Commissioner.

2.The learned counsel for the respondent submitted that the earlier counsel before the appellate Court did not have instructions to endorse no objection. It is his further submission that the order is a non-speaking order. The grievance of the petitioner in the present Revision Petition is in view of the no objection reported by the respondent herein, the first appellate court ought to have allowed the application in full, instead of rejecting his prayer for examination of the licensed survivor.

3.Whether the learned counsel had instructions or not, the fact remains that he had endorsed no objection, which necessitated the appellate Court to allow the application. As such, I do not find any infirmity in such an order, which is alleged to be a non speaking order. In view of the

endorsement, the Court below cannot be expected to pass a speaking order on merits.

4.Nevertheless, now that the respondent has raised a ground stating that the no objection endorsement itself is not proper, it would be appropriate to call upon first appellate Court to once again re-appraise the ground raised in the application and the averments in the counter affidavit.

4.In the light of the observations, the order passed in C.M.P.No. 17 of 2017 in A.S.No.212 of 2015 dated 12.01.2018 is set aside. Consequently, C.M.P.No.17 of 2017 in A.S.No.212 of 2015 is remanded back to the learned XVII Additional Judge, City Civil Court, Chennai, for fresh consideration. The petitioner and the respondent herein are at liberty to raise all the grounds raised in the present Revision before the first appellate Court.

Accordingly, the petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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10.01.2019

Index:Yes/No
Internet: Yes/No
mbi/sai

M.S.RAMESH.J.,

mbi/sai

To
The XVII Additional Judge,
City Civil Court,
Chennai 104.



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