

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.R.P.(PD).No.4115 of 2018

and

C.M.P.No.22697 of 2018

Neethimohan

(Plaintiff represented by 1st Defendant and Creditors)

Petitioner

...

-vs-

1.Rajendran

2.Rajeshkannan

3.Sathiyakala

4.Anitha

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.08.2018 in I.A.No.25 of 2018 inn I.A.No.475 of 2014 in O.S.No.136 of 2014 on the file of the Additional Subordinate Court, Namakkal.

For Petitioner

: Mr. C.Jagadish

For Respondents

: Mr.S.Senthilnathan

ORDER

The above application is filed questioning the dismissal of I.A.No.25/2018, by the learned Additional Sub-Judge, Nammakal in refusing to reopen I.A.No.475 of 2014, which has been closed on 05.06.2017.

2.The brief facts are as follows:

2.1.The revision petitioner had filed the suit in O.S.No.136/2014 in a representative capacity and had filed necessary application under Order 1 Rule 8 of the Code of civil procedure in I.A.No.475/2014. The learned Sub Judge, Nammakal without passing any order on the merits of the said Interlocutory Application had proceeded to close, the application that had been filed along with the suit in the year 2014. This application was kept pending and only on 05.06.2017, it was closed, stating that the issue can be decided in the suit itself. The very closure of the said petition by the learned Judge is erroneous since without the leave being granted the very suit itself would be jeopardized, as the *locus standi* of the plaintiff would be called in question.

2.2.The revision petitioner filed the present Interlocutory

Application to reopen the same. However, the learned Sub-Judge, Namakal has dismissed this application, stating that the permission was granted to file the suit in a representative capacity pursuant to which suit was also numbered on the same date and there was no objection from the public except the respondents and any objection with reference to the filing of the suit on a representative capacity can be decided at the time of recording of the evidence and the suit can be decided on merits. It is challenging that order that the revision petitioner is before this court.

3. Heard both sides.

4. From the perusal of the papers, it is evident that there was a total non-application of mind on the part of the learned Subordinate Judge, Nammakal. Without granting leave to the plaintiffs to sue in a representative capacity under the Provisions of Order 1 Rule 8 of the CPC., the suit would itself be rendered ineffective and therefore, the orders have to necessarily be passed in the application for leave to file a petition in a representative capacity.

5.The learned Sub-Judge, Namakkal has not applied his mind to the provisions of the Code of Civil Procedure and has consequently erred in dismissing the said application. The order passed in I.A.No.475/2014 is set-aside. The I.A.475/2014 is restored to file and the learned I Additional Sub Judge, Namakkal is directed to dispose of I.A.No.475 of 2014 in O.S.No.136 of 2014 on merits within a period of two months from the date of receipt of a copy of this order. Accordingly, the Civil Revision Petition is allowed. No costs. Connected Civil Miscellaneous Petition is closed.

21.02.2019

Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

jrs

सत्यमेव जयते

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To
The Additional Subordinate Judge,
Namakkal.



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P.T.ASHA, J.
jrs



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