

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.446 of 2020
and
C.M.P.No.2406 of 2020

D.Elangovan .. Petitioner

Vs.

Shrenik Kumar ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India challenging the fair order and decreetal order passed in I.A.No.2 of 2019 in O.S.No.1955 of 2019, dated 01.10.2019 by the learned IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Sureshbabu

O R D E R

Present revision has been filed against the order dismissing the petitioner's application to convert the original suit in O.S.No.1955 of 2019 filed under Order XXXVII C.P.C. into a regular suit.

2. Petitioner is the defendant in the suit. The respondent is the plaintiff and he filed the suit for recovery of money. In the above suit, while serving the summons, the copy of the plaint and the enclosures were not served on the petitioner/defendant. Hence, the petitioner/defendant filed an application stating that as there is mandatory violation of Order 37 Rule 2 CPC, the suit is not maintainable and the same has to be converted into a regular suit. The trial Court dismissed the said application. Now, challenging the same, present revision has been filed.

3. The learned counsel appearing for the petitioner would contend that under Order 37 Rule 2 C.P.C. the plaintiff has to necessarily serve summons along with a copy of the plaint and

the enclosures to the defendant. But in the instant case, copy of the plaint and enclosure were not served on the defendant. Hence, as there is mandatory violation he cannot maintain the suit under Order XXXVII C.P.C. and it should be treated as a regular suit.

4. I have considered the above submissions and also perused the records carefully.

5. On a perusal of the records, it could be seen that the suit was posted for hearing on 06.06.2019 and the summons which has been sent to the defendant along with the copy of the plaint and the enclosures has been returned by the bailiff stating that the defendant has gone out and that a copy of the same has been affixed and summons returned. For the next hearing on 04.07.2019, the summons were served on the defendant and a learned counsel also entered appearance for the defendant by filing vakalat. According to the trial Court, along with the summons, a copy of the plaint and documents have been sent to the defendant and as he is not available, the summons was returned and hence it cannot be stated as a mandatory violation of Order XXXVII C.P.C. That apart, as copies could not be served on the defendant, on that ground a summary suit cannot be converted into a regular suit. In the above circumstances, the trial Court dismissed the said application. I do not find any illegality or irregularity in the same as the trial Court has rightly dismissed the said application. There is no merit in the revision and the same is liable to be dismissed.

6. In the result, the civil revision petition is dismissed and the fair and decreetal order of the Court below, impugned in this revision is hereby confirmed. The trial Court is directed to serve a copy of the plaint and the documents enclosed along with the plaint to the defendant within a period of one week from the date of receipt of a copy of this order to enable him to defend his case. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

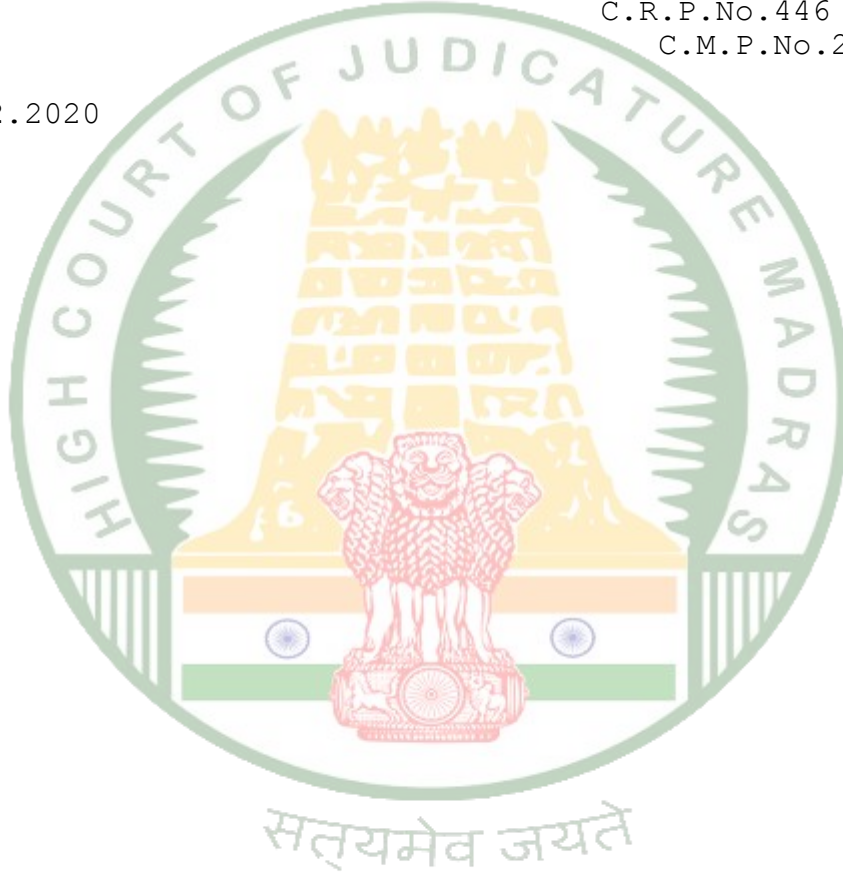
1.The IV Assistant Judge,
City Civil Court, Chennai.

2.The Section Officer, V.R. Section,
High Court, Madras.

+lcc to Mr.P.Suresh Babu, Advocate, SR.No.9284.

C.R.P.No.446 of 2020 and
C.M.P.No.2406 of 2020

BR(CO)
CSR: 07.02.2020



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