

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.675 of 2020
and
C.M.P.No.3499 of 2020

D. Saraswathi ... Petitioner
Vs.
E. Rajesh ... Respondent

PRAYER : Civil Revision Petition filed under article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.12.2019 made in I.A.No.5 of 2019 in O.S.No.175 of 2013 on the file of the District Munsif Court, Thiruvottriyur and consequentially bring back to file the evidence of the petitioner/defendant in O.S.No.175 of 2013 on the file of the District Munsif Court, Thiruvottriyur.

For Petitioner : Mr.M. Venkadeshan

ORDER

This Civil Revision Petition has been filed against the order passed by the Court below directing the petitioner to file a fresh proof affidavit for the purpose of cross examination.

2. The petitioner is the defendant in the suit. Earlier, after commencement of trial, the petitioner filed a proof affidavit, since she did not submit herself for cross examination, the trial Court has eschewed her proof affidavit and proceeded with the trial. Thereafter, the petitioner filed an application in I.A.No.5 of 2019 under Order IX Rule 13 CPC to set aside the exparte order and the same was dismissed as infructuous and the applications filed by the petitioner in I.A.Nos.4 and 6 of 2019 under Section 151 CPC to reopen the petitioner's side evidence and under Order XVIII Rule 17 CPC to recall her evidence were allowed and the petitioner was directed to appear before the Court on 06.01.2020 for the purpose of cross examination. Now, the grievance of the

petitioner is that when the petitioner had appeared before the Court for cross-examination, the Court below directed the petitioner to file a fresh proof affidavit, against which, the present revision has been filed.

3. The learned counsel for the petitioner would submit that when the application filed by the petitioner is allowed, there is no necessity to file a fresh proof affidavit. However, the Court below insisted the petitioner to file a fresh proof affidavit.

4. From the perusal of the record, it could be seen that the Court below had already eschewed the evidence of the petitioner. Now, by reopening her evidence and recalling her to give evidence, it cannot be said that the earlier order passed by the Court below eschewing her evidence shall stand automatically restored. In the above circumstances, the petitioner should necessarily file a fresh proof affidavit. Therefore, the petitioner is directed to file a fresh proof affidavit and submit herself for cross examination.

5. Accordingly, the Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

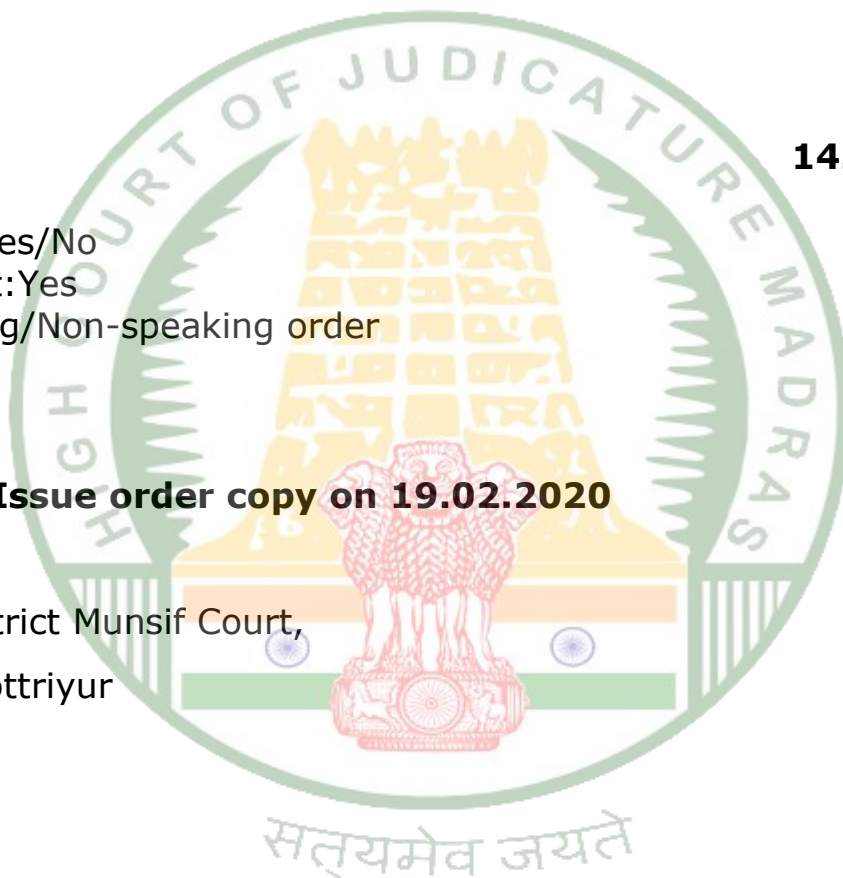
14.02.2020

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

mrp

Note : Issue order copy on 19.02.2020

To
The District Munsif Court,
Thiruvottriyur



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V.BHARATHIDASAN, J

mrp



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