

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) Nos.1621 and 1622 of 2020
and C.M.P.Nos.9835 and 9839 of 2020

P.Dillibabu

... Petitioner
in C.R.P.(PD).No.1621 of 2020

1.R.Gayathri
2.A.Nageswari
3.P.Sheela

... Petitioners
in C.R.P.(PD).No.1622 of 2020

Vs.

1.Mohammed Shuaib Musveen
2.Shagufta S Musveen
3.R.Gayathri
4.A.Nageswari
5.P.Sheela

... Respondents
in C.R.P.(PD).No.1621 of 2020

1.Mohammed Shuaib Musveen
2.Shagufta S Musveen
3.P.Dillibabu

... Respondents
in C.R.P.(PD).No.1622 of 2020

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the docket order dated 18.03.2020 passed in I.A.Nos.7 of 2020 and 8 of 2020 in I.A.No.1175 of 2018 in O.S.No.281 of 2018

on the file of the Principal District Judge, Chengalpattu and allow the Civil Revision petitions.

For Petitioners
in both C.R.Ps. : Mr.C.Umashankar

For Respondents
in both C.R.Ps. : Mr.V.Ilanchezhian

COMMON ORDER

Challenging the orders passed in I.A.Nos.7 of 2020 and 8 of 2020 in I.A.No.1175 of 2018 in O.S.No.281 of 2018 filed under Order IX Rule 7 of Civil Procedure Code, the petitioner has come before this Court.

2. The respondents 1 and 2/plaintiffs originally filed a suit for recovery of vacant possession of the suit schedule property and also for recovery of rental arrears to the tune of Rs.41,14,640/-. In the said suit, the respondents 1 and 2 have filed an application in I.A.No.1175 of 2018 under Order XXXVIII Rule 5 of Civil Procedure Code, for attachment. The petitioners, who are respondent Nos.1 to 4 have entered appearance through Advocate. Though time was granted for filing counter, they did not file any counter and therefore, they were set ex parte. The interlocutory application was posted along with the suit for hearing on 14.06.2019. Again, the matter was

adjourned to 18.06.2019. On 18.06.2019, the petitioners have filed a petition to set aside the ex parte order passed in the interlocutory application and the matter was adjourned to 28.08.2019 and 20.09.2019. On 21.10.2019, an order was passed directing the respondent to furnish security to the suit amount on or before 21.11.2019 failing which, attachment will be ordered and the matter was posted on 22.11.2019.

3. It appears that, on 18.03.2020, the application filed under Order IX Rule 7 C.P.C. was taken up independently and it was allowed on condition to deposit a sum of Rs.5,00,000/- into the suit account failing which, the attachment order passed on 22.11.2019, will be made absolute. Aggrieved over the same, the petitioner is before this Court.

4. This Court is unable to comprehend as to how the order in the interlocutory application filed under Order XXXVIII Rule 5 C.P.C came to be passed during the pendency of the petition, to set aside the ex parte order and when the defendant is effectively participating in the suit proceedings. If the ex parte order is set aside and the petition filed for that purpose was allowed, the petitioner would be relegated to the old position and he should be given an opportunity to show cause as to why he should not be directed to furnish

security. Though the learned counsel wants to draw the attention of the Court, to look into the merits of the case, the matter is left open to the consideration of the trial Court. In the above circumstances, I am unable to accept the procedure adopted by the trial Court in imposing an onerous condition without assigning reasons therefore.

5. However, considering the submissions made by both the parties, the order dated 18.03.2020 is set aside and the parties are given liberty to argue I.A.No.1175 of 2018 in O.S.No.281 of 2018 on merits following the procedure laid down under Order XXXVIII C.P.C. The Court below shall consider the submissions of both sides and pass appropriate orders on merits. The Interlocutory Application shall be disposed of within a period one month from the date of resumption of physical hearing of the Courts.

With the above direction, the Civil Revision Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.09.2020

asi/ms

To

The Principal District Judge,
Chengalpattu.

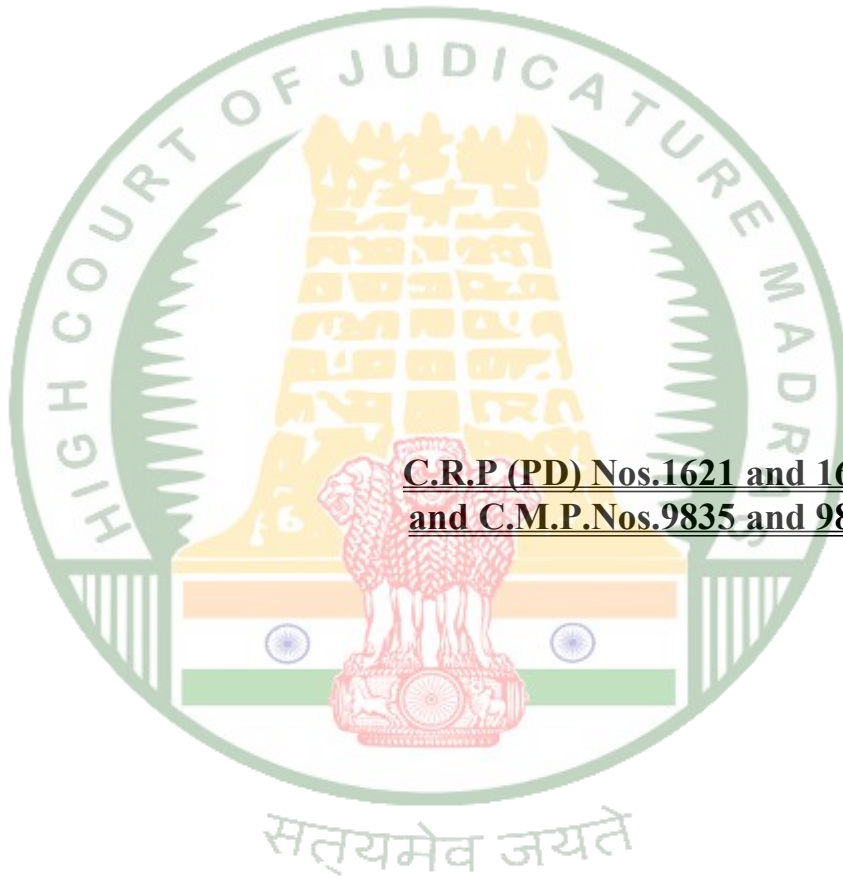


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M.GOVINDARAJ, J.

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