

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

CRP.(NPD).No.168 of 2014

and

MP.No.1 of 2014

1.G.Bagyalakshmi  
2.G.Elavarasan  
3.Valarmathi  
4.Malini  
5.Keertheeswaran  
6.Raja Raja Cholan

... Petitioners/

Defendants 15, 16, 19, 21 to 23

Versus

1.Jeevanandam  
2.Elavarasi  
3.Kalaimani

Respondents/

Plaintiff and Defendants 17 & 18

**PRAYER:** This Civil Revision Petition has been filed under Section 115 of CPC to set aside the fair and decreetal order passed in I.A.No.239 of 2013 in O.S.No.62 of 2004, dated 02.08.2013, on the file of the learned District Munsif, Nagapattinam.

For Petitioners : Mr.A.Muthukumar

For R1 : M/s.Srividhya Aravindan

**ORDER**

This Civil Revision Petition has been filed against the order passed by the learned District Munsif, Nagapattinam, in I.A.No.239 of 2013 in O.S.No.62 of 2004, dated 02.08.2013.

2 The defendants 15, 16, 19, 21, 22 & 23 in the suit are the revision petitioners herein.

3 The first respondent herein/plaintiff viz., Jeevanandam has filed a suit in O.S.No.251 of 1998, before the Principle Sub Court, Nagapattanam, for dissolution of partnership, wherein, they have filed an application in I.A.No.184 of 1999. Taking into consideration that there is a clause in the partition deed to refer the matter for arbitration, the said I.A., was allowed. Subsequently, on the point of jurisdiction, it appears, it was transferred to the District Munsif Court, Nagapattanam and re-numbered as O.S.No.62 of 2004 and the suit was dismissed for non payment of batta in respect of the defendants 1 & 2 and the defendants 15, 16, 19, 21, 22 and 23 are set ex-parte. The defendants 15, 16, 19 have not entered appearance. While the defendants 21 to 23 entered appearance through advocate, however, not filed written statement and hence, they were called ex-parte and trial has been completed after examination of PW1 to PW3 and marking Exs.A1 to A6. On behalf of the defendants, the defendants 8 and 13 were examined as DW1 and DW2 and marked no documents and judgment was rendered on 10.03.2011. Thereafter, the defendants 15 to 19, 21 to 23 have filed IA.No.239

of 2013, before the learned District Munsif Court, Nagapattanam, for dissolution of partnership business and for other relief and to set aside the ex-parte order passed on 10.03.2011. In so far as the said petition is concerned, the same is filed with a delay of 72 days and the said application was dismissed and hence, the Civil Revision Petition.

4 Heard Mr.A.Muthukumar, learned counsel for the petitioners and M/s.Srividhya Aravindan, learned counsel for the first respondent.

5 After hearing both sides, it is seen that the judgment rendered in O.S.No. 62 of 2004, by the learned District Munsif Court, Nagapattana, is on merits and hence, petition under Order 9 Rule 13 itself is not maintainable. Hence, this Court is not expressing any opinion as to the other allegation raised in the petition since some of the defendants have not paid Batta and they have been dismissed and some of them have entered appearance but not filed written statement while defendants D21 and D22 were brought on record as legal representatives of the second defendant. Hence, in view of the nature of the judgment being on merits and based upon the oral and documentary evidence adduced before the

Trial Court, a proper remedy for them is to file a regular appeal. In this view of the matter since the proper statutory remedy is provided under the Order 9 Rule 31 CPC, it appears CRP is not maintainable and on the facts of this case, CRP is rejected with liberty to move the regular appeal before the appropriate Court. If such an appeal is filed, the time taken before this court on this CRP shall be excluded for the purpose of limitation. The observation made by this Court is only for deciding this issue and the Lower Appellate Court is required to take up the appeal and decide the issue without being influenced by the observation made in the above paragraphs.

6 In the result, the Civil Revision Petition stands dismissed with liberty as stated supra and the order passed by the learned District Munsif, Nagapattinam, in I.A.No.239 of 2013 in O.S.No.62 of 2004, dated 02.08.2013, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

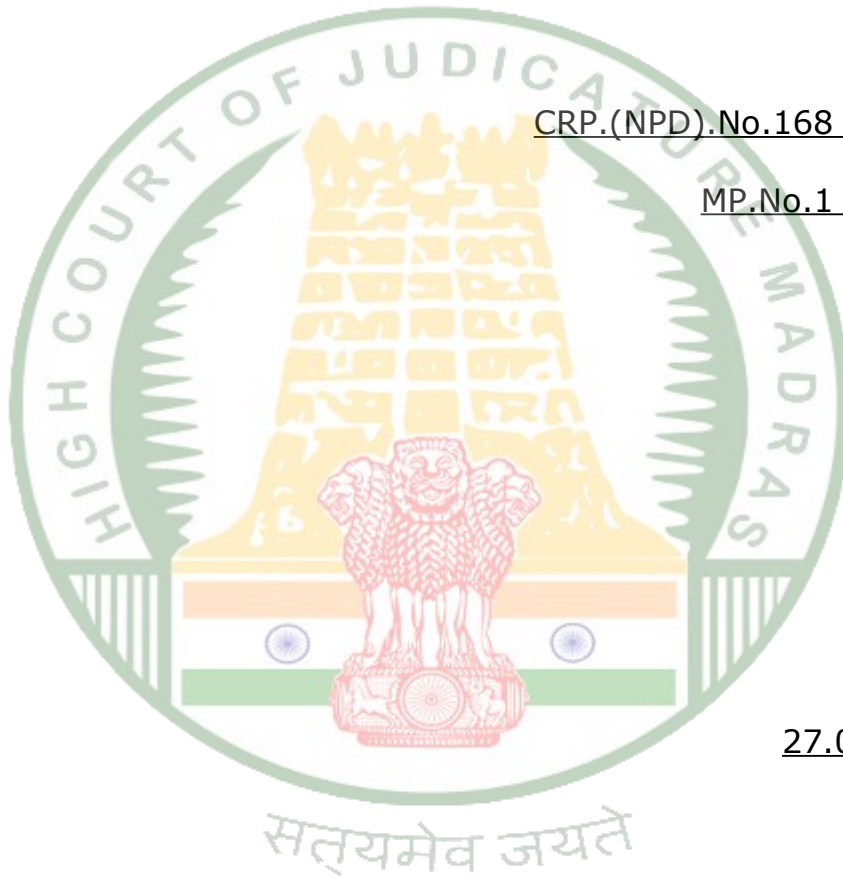
dua  
Speaking Order:Yes/No

To  
The District Munsif, Nagapattinam.

**RMT.TEEKAA RAMAN., J.**

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dua



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