

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.2724 of 2014

and

M.P.No.1 of 2014

Sampath Kumar ... Petitioner/Defendant

Versus

1.Nambanna Gounder ...1st Respondent/Plaintiff

2.The Superintending Engineer (O & M)
Thermal Power Station,
Mettur Dam – 1, Mettur Talu,
Salem District. ...2nd Respondent

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the learned Subordinate Judge, Mettur, dated 17.01.2014 in I.A.No.316 of 2013 in O.S.No.96 of 2013.

For Petitioners : Mr.P.Valliappan

For R1 : No appearance

For R2 : Mr.V.Viswanathan

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Mettur, in I.A.No.316 of 2013 in O.S.No.96 of 2013, dated 17.01.2014.

2 The defendant in the suit is the revision petitioner.

3 Brief facts of the case are as follows:

The plaintiff/first respondent herein has filed a money suit in O.S.No.96 of 2013, before the learned Subordinate Judge, Mettur, for recovery of money due on pro-note for the principal amount of Rs.1,50,000/- along with interest. During the pendency of the suit, I.A.No.316 of 2013, was filed under Order 38 Rule 5 read with Section 151 of CPC for attachment of the amount of Rs.2,25,000/- from out of Rs.10,00,000/-, in the event of the defendant opting for Voluntary Retirement Scheme. In the said I.A. the defendant filed a statement alleging that he has not opted for Voluntary Retirement Scheme. The second defendant in the suit has filed a Memo stating that the first defendant has not filed any petition or application for Voluntary Retirement Scheme. On consideration, the learned Sub Judge at Mettur, has ordered attachment of the retirement benefits except Provident Fund and Gratuity amounts to Rs.2,25,000/-, as could be seen from the decree. Hence, the revision petition by the first defendant.

4 Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Electricity Board/second

respondent herein. The first respondent herein absent none appeared.

5 On a perusal of the records, it is seen that it is a petition filed under Order 38 Rule 5 of CPC. Without affording any opportunity to furnish security to the suit amount, the learned Sub Judge appears to have passed an order of attachment and it is not likely to be happened. In view of the fact that both the respondents viz., employer as well as Electricity Board have stated that the plaintiff has not opting for Voluntary Retirement Scheme. Therefore, the service benefits on retirement does not arise, since he has not availing Voluntary Retirement Scheme.

6 In this view of the matter, in view of the specific stand given by the Electricity Board and the Memo filed before the Trial Court in I.A., this Court is of the considered view that the contention or plea raised by the plaintiff in the petition appears to be non existing and apprehension is found to be unreasonable.

7 Therefore, the order passed in I.A.No.316 of 2013, dated 17.01.2014 is set aside and the matter is remitted back to the learned Subordinate Judge, Mettur, with a direction to follow the

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procedure contemplated under Order 38 Rule 5 in the light of the Memo filed by the Electricity Board as to the apprehension expressed by the plaintiff appears to be non exists.

8 With the above direction, the Civil Revision Petition stands allowed and the order passed in I.A.No.316 of 2013 by the learned Subordinate Judge, Mettur is set aside. No costs. Consequently, connected Miscellaneous Petition is also closed.

08.01.2020

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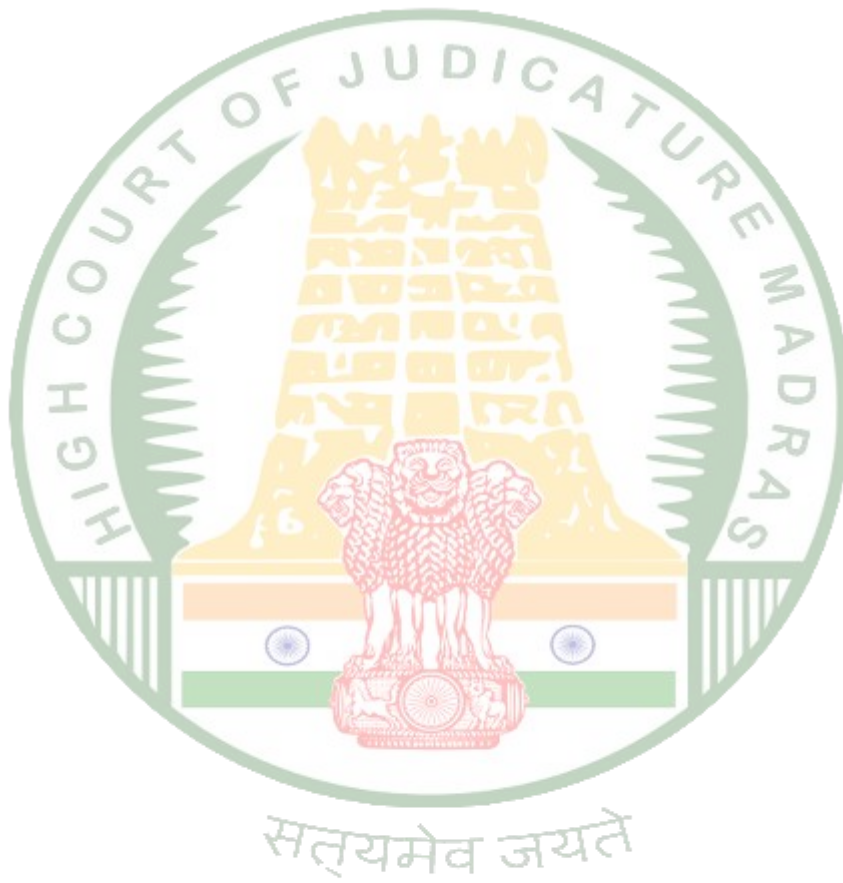
Speaking Order:Yes/No

To

The Subordinate Judge, Mettur.

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