

IN THE HIGH COURT OF JUDICATRE AT MADRAS

DATED : 08-01-2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.Nos.26742 & 26743 of 2019

in

A.S.Nos.876 of 2012 & 566 of 2013

M.C.Subramaniam .. Petitioner/Appellant in both CMPs 26742 of 2019
and 26743 of 2019

vs.

1.M/s.Sakthi Finance Limited,
Represented by its General Manager
S.Arumugam,
No.473, Dr.Nanjappa Road,
Coimbatore.

2.C.Subramaniam

3.Sadasivam .. Respondents/Respondents both CMPs 26742 of
2019 and 26743 of 2019

Civil Miscellaneous Petitions are filed under Section 151 of the
Code of Civil Procedure, to direct the registry of this Court to refund the
Court Fee paid by the petitioner in A.S.Nos.876 of 2012 and 566 of 2013
as per orders dated 18.09.2019 and 16.09.2019 respectively.

For Petitioner in both CMPs : Ms.R.Radha Pandian

COMMON ORDER

The relief sought for in these miscellaneous petitions are to direct the High Court Registry to refund the Court fee paid by the petitioners in A.S.Nos.876 of 2012 and 566 of 2013 as per the orders dated 18.09.2019 and 16.09.2019. This Court passed orders in A.S.Nos.876 of 2012 and 566 of 2013, permitting the appellants to withdraw the appeals based on the memo filed. The orders read further that, in the light of the above position, the first appeals are dismissed as withdrawn. The Registry is directed to refund the Court fee to the appellants as per the rules.

2. The learned counsel appearing on behalf of the petitioners/ appellants made a submission that pursuant to the orders of this Court, he approached the Registry, High Court, for refund of Court fee paid. However, the officials of the Registry, High Court, orally informed to the learned counsel for the appellants that refund of Court fee cannot be made in view of the fact that there is no specific Rule for such refund on

withdrawal of the appeal suit by filing a memo. The learned counsel for the petitioners made a submission that the memo was filed in view of the fact that the issues between the parties to the lis were settled out of Court. Perusal of the memo dated 16th September 2019, the same reveals that the petitioners in clear terms has stated that the cases are settled out of Court between the appellant and the 1st respondent and on account of that, has taken a decision to withdraw the appeal suits.

3. The learned counsel for the petitioners reiterated that the High Court Registry made an oral rejection, despite the fact that this Hon'ble Court passed orders to refund Court fee. Even in case, the Registry has to return the claim in writing. Contrarily, they cannot orally reject the petitioners claim for refund of Court fee in view of the fact that judicial orders were passed by the High Court in the appeal suits. The oral proclamation made by the High Court Registry is that there is no rules for refund of Court fee and therefore, as per the orders of the Court, the Court fee paid cannot be refunded. However, they have not passed an order to that effect.

4. Let us now consider, whether the refund of Court fee is permissible under the rules or not?

5. Section 69-A of the Code of Civil Procedure contemplates 'Refund on settlement of disputes under Section 89 of Code of Civil Procedure'. The provision reads that "Where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908, the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute".

6. As far as Section 69 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 is concerned, the said provision is applicable in respect of the Original Suit as the full amount of Court fee shall be paid, whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim. Thus, Section 69 shall not apply in respect of the appeal suits filed. However, Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act would be applicable in

respect of appeal suits, more specifically, for refund of Court fee, wherein the issues are settled out of Court between the parties.

7. Section 69-A was substituted by way of 2017 amendment, which clarifies that, where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, the Court fee paid shall be refunded. By such reference, it is made clear that such refund need not await for settlement of disputes.

8. Thus, the parties are entitled for refund of Court fee irrespective of the fact, whether the issues were settled or not through an alternate disputes resolution methods based on Section 89 of the Code of Civil Procedure. The very purpose and object of Section 69-A is that once the jurisdictional Civil Court referred the matter for settlement out of Court, then the Court fee need not be retained and the same is to be refunded to the parties in full under Section 69-A of the Court Fee Act.

9. The learned counsel appearing on behalf of the petitioner made a

submission that the Registry, High Court officials informed about the judgment of the Division Bench of this Court dated 13.11.2014 passed in Appeal Suit(MD).No.128 of 2005, wherein the Division Bench held as follows:

"8.We are inclined to accede to the request of the learned counsel for the appellant, specifically considering the fact that the appeal has been withdrawn, after settlement. The appellant would have been able to obtain refund of the Court fees under Section 69-A of the said Act, on a recourse of ADR Mechanism under Section 89 of C.P.C. being resorted to. The said provision was introduced as an incentive to aid in assistance to ADR Mechanism as well the process of settlement of lis. The only difference is that the present settlement of lis is inter-se parties, without intervention of a mediator."

9.We are sure that the application to be preferred by the appellant would receive appropriate consideration by the Government ex gratia ad misericordia domini regis, keeping in mind the salutary object of encouraging settlement in whatever form feasible albeit inter-se settlement between the parties. The Registry is directed to return the defaced stamp papers, with due certificate, to enable the appellant to make such an application. We would expect disposal of such

application within a period of two months of receipt of the same from the appellant."

10. Perusal of the judgment, the Hon'ble Division Bench in unambiguous terms held that as per Section 69-A of the Court Fee Act, if the settlement is made through any of the methods as contemplated under Section 89 of the Code of Civil Procedure, then the parties are entitled for the refund of full Court fee amount. Therefore, the Hon'ble Division Bench never declined the relief of the refund of Court fee, but clarified Section 69-A by stating that the parties are entitled to get the refund of the full amount of Court fee, if they have settled the matter in any one of the method as contemplated under Section 89 of the Code of Civil Procedure.

11. The learned counsel for the petitioner made a submission that the order of the Hon'ble Division Bench has been misinterpreted by the High Court Registry officials by stating that if the appeal suit is withdrawn on account of settlement out of Court, then the parties are not entitled for

refund of Court fee. In other words, if the parties have settled the issues out of Court and had withdrawn the appeal suit, then they are not entitled for refund of Court fee.

12. In this context, it is relevant to consider the methods of settlement, which all are contemplated under Section 89 of the Code of Civil Procedure. Section 89 Provides Settlement of disputes outside the Court and the same reads as under:

"89. Settlement of disputes outside the Court.--1)

Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok Adalat; or*
- (d) mediation.*

(2) Where a dispute has been referred--

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as

may be prescribed.]

13. With reference to Section 89 of the Code of Civil Procedure and Section 69-A of the Court fee Act are to be read together cogently. Section 69-A of the Court fee Act enumerates that "Where the Court refers the parties to the suit to any of the modes of settlement of the dispute referred to in Section 89 of the Code of Civil Procedure". Therefore, the very purpose and object of Section 69-A of the Court Fee Act is that, in the event of settlement through any modes as contemplated under Section 89 of the Code of Civil Procedure, then the parties would be entitled for refund of full Court fee.

14. In this context, the scope of Section 89 of the Code of Civil Procedure is to be interpreted liberally as both the amendments made in the Civil Procedure Codes as well as the Tamil Nadu Court Fees and Suit Valuation Act are beneficial legislation and therefore, the principles of liberal interpretation is to be adopted. As far as the beneficial legislations are concerned, interpretation cannot be narrowed down, as such

restrictions in interpretation would not only defeat the purpose and object of the amended provisions, but will create discrimination amongst the same class of persons. For example, a party to the appeal suit through their respective counsels conducting Conciliation and arriving a settlement, is not entitled for refund of Court fee and if the very same settlement is made through the Mediation and then they are eligible for refund, such a situation would undoubtedly create a discrimination amongst the homogeneous class of parties and the same became unconstitutional and in violation of Articles 14 and 16 of the Constitution of India. Therefore, such welfare or beneficial legislations are to be interpreted liberally, so as to extend the benefit to all the similarly placed persons, who belong to the same category and, the implementation should ensure adherence to the right of equality enshrined under the Constitution of India.

15. As of now, if the settlement is made through Mediation or Lok Adalat or under the Arbitration Act, the parties are entitled to get refund of full Court fee. If the similar method is adopted by the parties themselves, then the High Court Registry is refusing to refund the Court fee and under

these circumstances, this Court is of an opinion that the interpretation now provided by the High Court is undoubtedly causing discrimination amongst the same class of people and the benefit of beneficial legislation cannot be restricted in such a manner, so as to deprive the same class of persons from availing the said benefit pursuant to the amendments made in the Code of Civil Procedure as well as the Tamil Nadu Court Fees and Suit Valuation Act.

16. Approach in such matters must be pragmatic. When Section 89 contemplates Court may reformulate the terms of a possible settlement and refer the same for Arbitration, Conciliation, Judicial Settlement including settlement through Lok Adalat or Mediation and the same became the discretion of the Court as the language employed in the provision is "the Court may", then the said settlement can be done by the learned counsels appearing for the respective parties by way of Conciliation or through the other related methods of settlement. Even such reference may made by the Court after receiving the observation of the parties. Therefore, the spirit of Section 89 of the Code of Civil Procedure is

unambiguous that if the parties are willing for settlement and if the Court made any such observation, then the Court may permit the parties to go for settlement through various methods. All such methods of settlement including Conciliation, Mediation can be brought within the purview of the mode of settlement, which cannot be restricted in a particular manner or strictly with reference to the provisions of the Arbitration Act or Legal Services Authority Act. For instance, Section 89(2)(d) stipulates that 'for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed'. Therefore, wider meaning is provided, so as to include all such methods of settlements made between the parties outside the Court.

17. The general principles of law is that once a Statute provides refund of Court fee by way of an amendment, then such refund is to be made equally to all similarly persons and the very concept for such refund is to encourage the parties to settle the matters out of Court and on such settlement, the Court shall refund the Court fee under Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act.

18. Encouraging the parties to settle the issues out of Court is the concept now being developed in our great Nation on account of huge pendency of cases. Various schemes are introduced, enabling the parties to the litigation to settle the disputes out of Court. Thus, the encouragement for development of such schemes must be to refund the Court fee. If such disputes are settled by the parties out of Court and the modes prescribed in Section 89 of the Code of Civil Procedure cannot be restricted or brought in a narrow compass, so as to deprive the parties from getting the refund of Court fees on settlement of disputes out of Court. Therefore, the very purpose and object sought to be achieved is to be looked into, while interpreting such beneficial legislations.

19. Section 89(1) of the Code of Civil Procedure stipulates that the Court may refer for settlement by way of Arbitration, Conciliation, Judicial Settlement through Lok Adalat and Mediation. Section 89(2) stipulates that where the dispute has been referred for arbitration, then the provisions of the Arbitration and Conciliation Act, 1996 shall apply. If it is

to the Lok Adalat, then the Legal Services Authority Act would apply. Section 89(2)(c) is concerned, for judicial settlement, the Court shall refer the same to the suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act shall apply.

20. As far as Section 89 (2) (c) of the Code of Civil Procedure cited supra is concerned, wider scope has been enumerated for judicial settlement. The Court shall refer for settlement between the parties to a suitable institution or person and such institution or person deemed to be a Lok Adalat. Therefore, Section 89(2)(c) regarding judicial settlement provides a wider scope for settlement between the parties out of Court. Even the individual persons are permitted to settle the disputes out of Court. Once such persons have taken up the dispute for the purpose of settlement, then such person shall be deemed to be a Lok Adalat. Therefore, the ambit of judicial settlement is wider and cannot be restricted to a narrow compass, so also for Mediation, the Court shall effect a compromise between the parties and follow such procedure as

may be prescribed. At the outset, the Court can acknowledge the settlement and find out whether such settlement has been done properly and made within the ambit of law. In other words, the Court is bound to ascertain, whether such settlement between the parties are meaningful and in accordance with law. Once, the Court arrived a conclusion that such settlements arrived between the parties to the lis is a legally valid settlement made within the ambit of law and with reference to the issues raised in the appeal suit, then the parties would be entitled for refund of full amount of Court fee. In other words, the Courts are otherwise bound to ascertain the legality of the settlement and once such settlements are found proper and legally made, then the Court should made refund of full amount of Court fee under Section 69-A of the Court Fee Act.

21. This Court is of the considered opinion that the method of settlement as contemplated under Section 89(1) namely Arbitration, Conciliation, Judicial Settlement, Settlement through Lok Adalat or Mediation should be understood with reference to Section 89(2) as Section 89 (2)(c) and 89(2)(d) provide wider scope for any such settlement and

even the settlement arrived between the parties are to read within the ambit and scope of Section 89(1) or 89(2).

22. In this regard, it is relevant to understand the meaning for the word "Conciliation" in the Black's Law Dictionary defines as follows:

- "1. The settlement of a dispute in an agreeable manner.*
- 2. The process of trying to get disputants to stop arguing and agree.*
- 3. More specifically, a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved; especially, a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences."*

23. Therefore, the word "Conciliation" as defined in the Black's Law Dictionary unambiguously portrays that the Conciliation as contemplated under Section 89 of the Code of Civil Procedure is to be interpreted to provide broader perception, so as to facilitate the parties to get refund of the full Court fee on settlement of the issues out of Court.

24. It is pertinent to note that Section 89 of the Code of Civil Procedure itself was amended and inserted by the Code of Civil Procedure (Amended Act 1999 with effect from 01.07.2002).

25. Therefore, the earlier Section 89 was repealed by Act 10 of 1940 and as per the amended Section 89, the scope of settlement had been widened, enabling the parties to settle the civil disputes outside the Court through several modes, so as to resolve the issues. The developments made in law is to be interpreted in such a manner, so as to reach its object and purpose. The very purpose of Section 89 is also to encourage the settlement of disputes outside the Court. Therefore, the words 'Arbitration', 'Conciliation' and 'Judicial Settlement' and 'Mediation' must be liberally interpreted in its real context and to incorporate all such kinds of settlement made between the parties through out of Court. Even otherwise, encouragement of such methods of resolving the disputes or encourage the parties to accept any such modes for resolving the dispute would not cause any prejudice to the parties or cause any hindrance for

the effective adjudication of the legal issues raised if any in the suit. Therefore, once the parties have taken a decision to settle the disputes outside the Court, then the Court must provide an opportunity for such settlement and the refund of Court fee must be a consequential one and the Courts cannot deny grant of refund of Court fee of full amount as contemplated under the provisions of law.

26. Similarly, let us look into the definition of the word "Mediation" as per the Black's Law Dictionary, wherein it is defined as follows:

1. The method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. Mediations can be of various nature. Evaluation Mediation, Facilitated Mediation and Conciliation Services, Arbitration, etc.,

27. Mr.R.Subramaniam, learned counsel, who assisted the Court in this matter, also made a submission that when the refund of full amount of Court fee is granted in respect of the settlement through Mediation Centre, why such a benefit should not be granted to the litigants, if they

have settled the matter out of Court and had taken a decision to withdraw the suit. There is a logic behind the argument and one cannot brush aside the same. The very purpose and object of these amendments, creation of Mediation Centre are undoubtedly in order to implement the provisions of Section 89 of the Code of Civil Procedure. While doing so, the methods of settlement, the mode of settlement and other aspects need not be gone into in depth in view of the fact that the word "Conciliation" is to be defined in a broader manner, in its real perspective, so also the terms of "Mediation", and "Judicial Settlement".

28. It is needless to state that the appeal suit filed before the High Court is the continuation of the Original Suit. The Court fee has been paid in the original suit and on disposal of such original suits, the parties are not entitled for any refund of Court fee under Section 69 of the Court Fees Act. Once the appeal suit is filed, then a separate Court Fee is collected for entertaining the appeal suit. Therefore, the appeal suit is also a suit within the meaning of Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. Therefore, once the appeal suit is settled out of Court

before disposal, either through the Arbitrator, Conciliator, Mediator or through Lok Adalat pursuant to the orders of the Court or settled between the parties through their own Conciliators, Mediators or through the respective learned counsels appearing on behalf of the parties, then also the parties are entitled for refund of full Court fee with reference to Section 69-A of the Court Fee Act. In the event of dishonoring the entitlement of refund, then the same would cause discrimination amongst the same class of people, who had settled the Civil disputes out of Court and such a discrimination is not only unconstitutional, but in violation of the very spirit and scope of the amended Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act and with reference to Section 89 of the Code of Civil Procedure.

29. Under these circumstances, even in cases, where the parties had withdrawn the appeal suit by filing a memo or affidavit, stating that the disputes between the parties are settled out of Court, they are entitled for refund of full Court fee under Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act. It is not necessary while permitting the parties to

withdraw the appeal suit, there must be a separate order from the Court for refund of Court fee as the parties are entitled under the statute for such refund.

30. The scope of settlement by the parties to the appeal suit out of Court, neither be restricted nor be narrowed down. Wider scope is to be provided for settlement of such Civil disputes out of Court to encourage the parties to settle the issues. The very purpose and object of the amendment to the Code of Civil Procedure as well as the Tamil Nadu Court Fees and Suit Valuation Act is also to encourage the litigants to settle the disputes out of Court and the benefit of refund of Court fee is also granted under Section 69-A of the Court Fees Act. Thus the Courts cannot restrict the scope or discriminate the litigants, who have settled the issues out of Court in a particular manner under Section 89 of the Code of Civil Procedure.

31. Therefore, this Court is of the considered opinion that all such settlements, wherein a petition/ memo is filed by the respective parties to

22/25

the appeal suit seeking permission for the withdrawal of the appeal suit, then the Courts are bound to refund the full amount of Court fee to the litigants concerned based on Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, by issuing necessary certificate.

32. Accordingly, the C.M.P.Nos.26742 and 26743 of 2019 in A.S.Nos.876 of 2012 and 566 of 2013 stand allowed with a direction to refund the full amount of Court fee to the petitioners as prayed for. No costs.

kak

08.01.2020

Note: Registry is directed to communicate the copy of this order to the Registrar General, High Court, Madras.

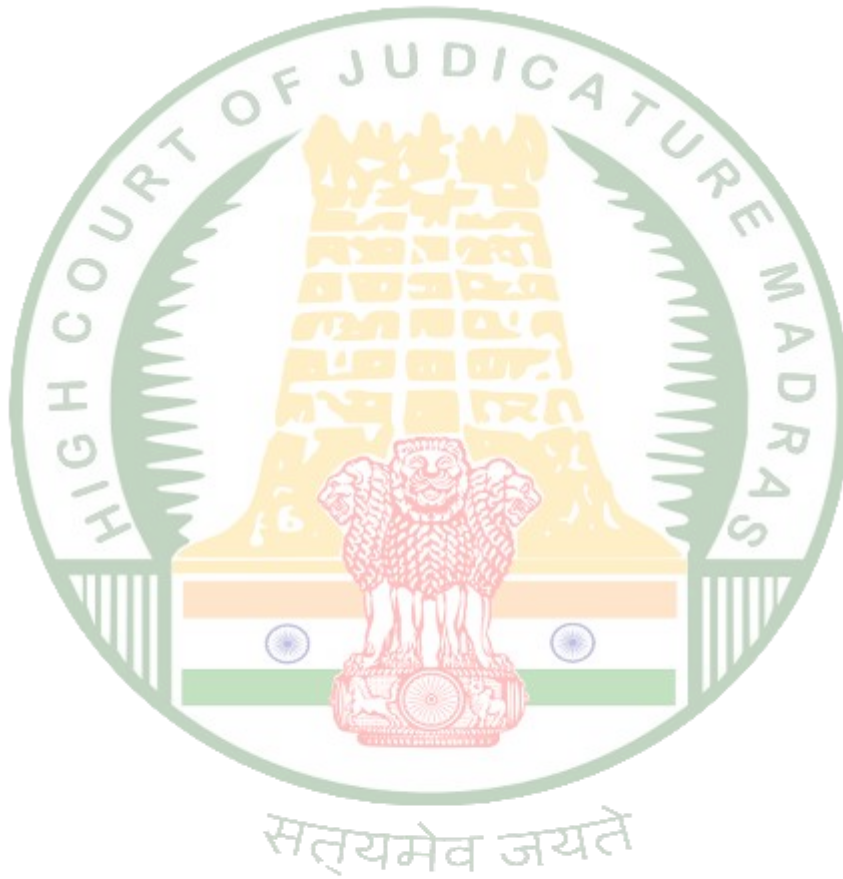
सत्यमेव जयते

WEB COPY

23/25

To

The Registrar General,
High Court,
Madras.

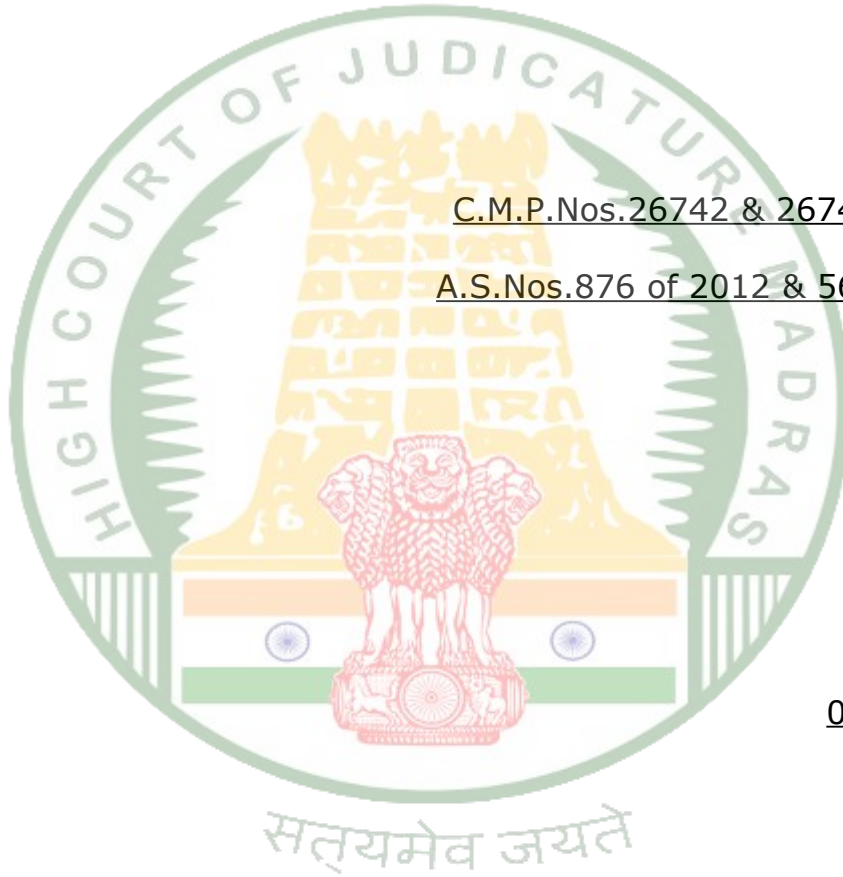


WEB COPY

C.M.P.Nos.26742 & 26743 of 2019 in
A.S.Nos.876 of 2012 & 566 of 2013

S.M.SUBRAMANIAM, J.

kak



C.M.P.Nos.26742 & 26743 of 2019
in
A.S.Nos.876 of 2012 & 566 of 2013

08.01.2020

WEB COPY

25/25