

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)Nos.490 & 491 of 2021
and
C.M.P.No.4273 of 2021

Dr.Mohana Balusamy
W/o.Dr.B.A.Balusamy

...Petitioner in both cases

Vs

C.Prabu
S/o.K.Chandrasekaran

...Respondent in both cases

COMMON PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 22.12.2010 made in I.A.Nos.2 and 4 of 2019 in O.S.No.13 of 2017 on the file of the IV Additional District and Sessions Court, Erode at Bhavani.

For Petitioner : Mr.N.Manoharan

C O M M O N O R D E R

The present revision petitions have been filed challenging the judgment and decree passed by the learned IV Additional District and Sessions Judge, Erode, Bhavani, in I.A.Nos.2 and 4 of 2019 in O.S.No.13 of 2017.

2. The defendant/respondent herein had filed the interlocutory applications in I.A.Nos.2 & 4 of 2019 to recall P.W.1 and re open evidence of the respondent herein.

3. The learned counsel for the petitioner would submit that the petitioner herein has filed a suit for delivery of possession, arrears of rent and damages against the respondent on 24.04.2017. The respondent/defendant has filed his written statement on 25.04.2018. The petitioner has filed her reply statement on 27.04.2018 and the respondent has also filed his

additional written statement on 01.12.2018. Issues were framed on 24.10.2018. P.W.1 was examined in chief on 20.03.2019 and she was cross examined on 08.08.2019. Thereafter, I.A.Nos.2 and 4 of 2019 were filed on 22.10.2019 to reopen and recall P.W.1 with a view to delay the trial. He would further submit that the suit was posted for evidence of D.W.1 on 06.09.2019 and he failed to appear, thereafter, the evidence was closed and the suit was posted for arguments on 22.10.2019. While so, the respondent has filed I.A.Nos.2 and 4 of 2019 to reopen and recall the petitions without any reason or justification. He would contend that the learned trial Judge has not given any reasons to allow the petitions. The order passed in I.A.No.3 of 2019 has been cited as a reason to allow the above petitions. The order passed by the learned Court is bald, lacunea and unreasoned one. Order 18 Rule 17 CPC cannot be allowed in a casual manner to fill up the lacunae as held in 2016 (14) SCC 142, 2016 (11) SCC 296, 2013 (14) SCC1, 2011 (11) SCC 275 and 2009 (4) SCC 410. It is further contended that the trial Court has neither considered the law declared by Apex Court in the above decisions nor taken note of the stage of the suit, before allowing the petition to recall P.W.1 after a lapse of 3 years. Hence, the learned counsel for the petitioner prays to allow these petitions.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. It is seen from the averments that the present petitions have been filed after a period of three years to recall P.W.1 and reopen the evidence of the respondent herein. The Court below has allowed these petitions on payment of cos of Rs.3,000/-. Further for filing these two applications for re-opening and re-call, the Court below has passed the orders without giving any valid reasons. The cross examination of P.W.1 is necessary and the ex-party order was set aside on payment of cost of Rs.3,000/-, each and every cases has its own procedures and the Court below is also having thousands of cases pending on its file. The entire nation has been facing the difficult situation of lock down for the past one year. Due to the national lock down, the Court below could not proceed further in this matter.

6. Hence, this Court is inclined to direct the learned IV Additional District and Sessions Judge, Erode, Bhavani, to complete the cross examination of P.W.1 by the defendant within a period of two weeks from the date of receipt of copy of this order and the Court should proceed further in these matters and complete the trial as expeditiously as possible the procedure established under the law.

7. Accordingly, the present civil revision petitions are disposed of. No cost. Consequently, connected civil miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sbn

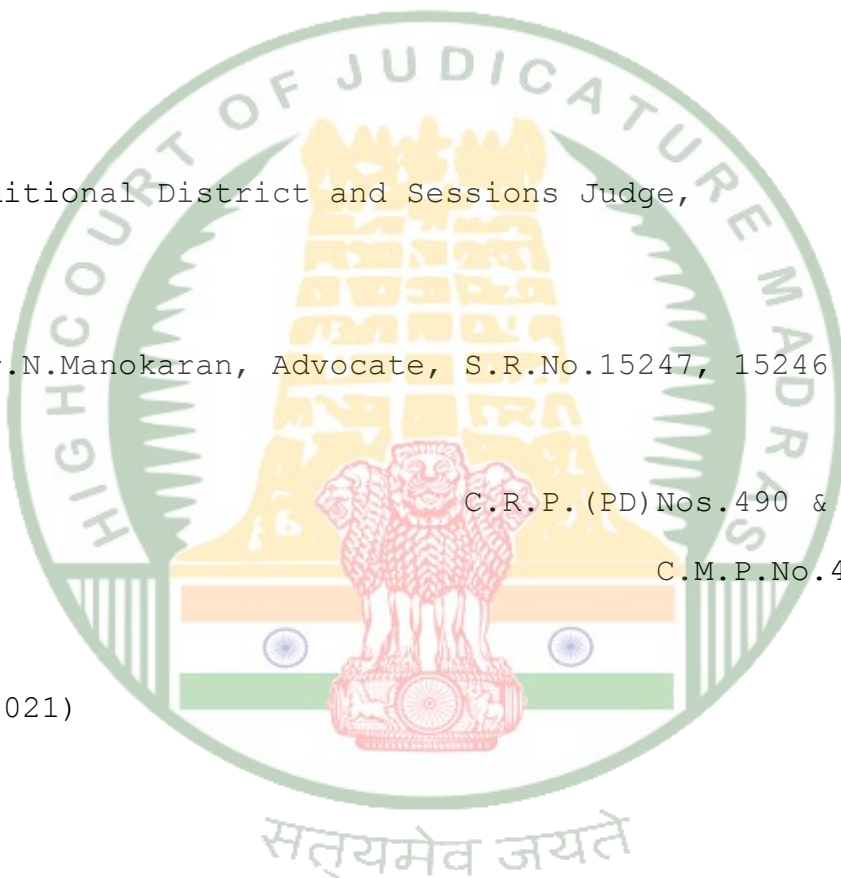
To

The IV Additional District and Sessions Judge,
Erode,
Bhavani.

+2cc to Mr.N.Manokaran, Advocate, S.R.No.15247, 15246

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KV (CO)
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