

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.384 of 2018

and

CMP.No.2066 of 2018

I Gulzar Ahmed

..Petitioner

Vs.

P.Sesha

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 18.07.2017 in IA.No.61 of 2017 in OS.No.1620 of 2017 passed by the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.A.Thirumaran

For Respondent : M/s.R.Nirmala Devi

**ORDER**

This civil revision petition is filed against the fair and decretal order dated 18.07.2017 passed in IA.No.61 of 2017 in OS.No.1620 of 2017 passed by the XVII Additional City Civil Court,

Chennai, thereby dismissing the petition filed for converting the summary suit into ordinary suit.

2. The petitioner is the defendant in the suit filed by the respondent herein. The respondent filed suit for recovery of money under Order 37 of CPC to try the suit summarily. The petitioner was served with summon and he entered appearance through his counsel. But the petitioner failed to file any petition to grant leave to defend the suit as contemplated under Order 37 Rule 3 of CPC. Therefore, the respondent filed petition in IA.No.61 of 2017 to decree the suit as prayed for. While pending the said petition, the petitioner filed petition for converting the summary suit into ordinary suit for the reason that he was served only with copy of summon without copy of the affidavit as well as copy of plaint documents. Therefore, the petitioner was not able to file petition to grant leave to defend the suit. As per Order 37 Rule 3 of CPC is concerned, when the suit summon was served to the defendant, he has to enter appearance and they shall file petition to grant leave to defend within 10 days from the date of receipt of summon.

3. Admittedly, the petitioner did not file any petition to grant leave to defend the suit. When the petitioner had taken specific stand that he was served only summon without copy of the affidavit and

plaint documents, he shall file before the Court the address for service and notice for them. Even assuming that the petitioner was not served with copy of the affidavit and annexures to the plaint, he may raise the said ground in the petition to grant leave of the court. Without doing so, the petitioner filed the present petition to convert the case into ordinary suit. Further, the petitioner failed to file any document to show that summon was served along with the plaint only, not of the documents.. Therefore, the court below rightly dismissed the petition and decreed the suit. As such this Court finds no infirmity or irregularity in the order passed by the court below.

4. Accordingly, this civil revision petition is dismissed. However, the petitioner is at liberty to file appeal as against the judgment and decree passed in the above suit. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

15.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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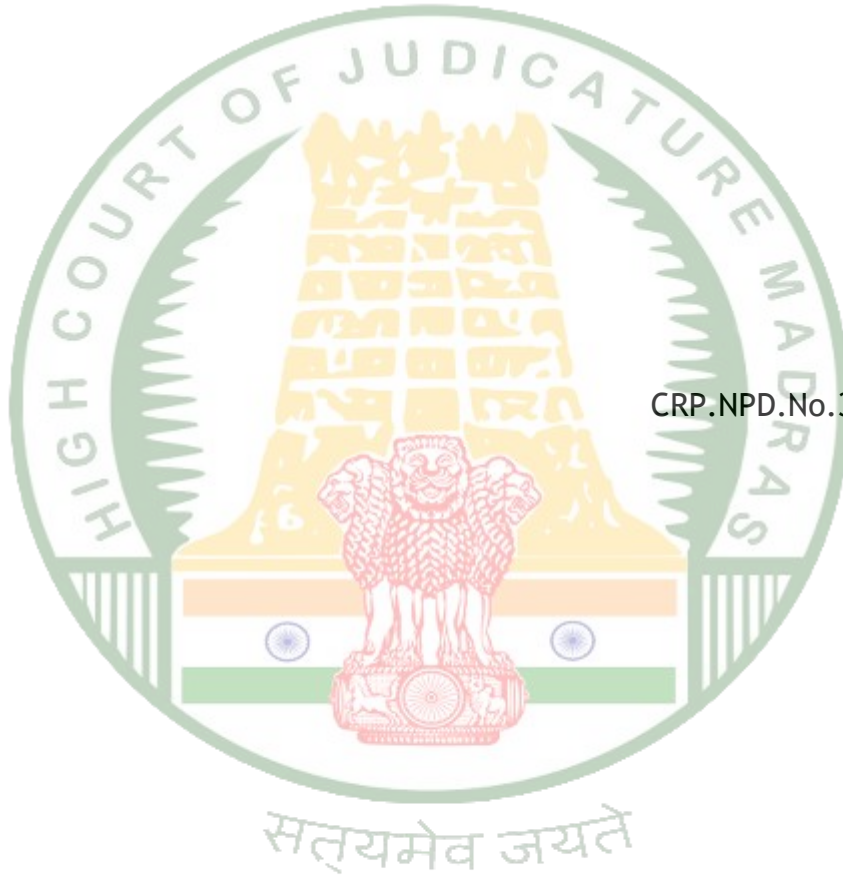
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**G.K.ILANTHIRAIYAN,J.**

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To

The XVII Additional Judge,  
City Civil Court, Chennai.



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