

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATE: 23.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD).No.1697 of 2021

and C.M.P.No.13142 of 2021

1.Technoweld Alloys (India) Private Limited

Registered Office No.114,

Developed Plots, Industrial Estate

Perungudi, Chennai - 600 096.

2.Technoweld Alloys (Overseas) Private Limited

Registered Office & Works

No.114, Developed Plots, Industrial Estate

Perungudi, Chennai - 600 096.

Rep. by its Director

...Petitioners

Vs.

1.R.Saravanan

2.The Controlling Authority

Under the payment of Gratuity Act,

The Deputy Commissioner of Labour-2

Tamil Nadu Labour Welfare Building

DMS Campus, Teynampet,

Chennai - 600 006.

...Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the learned II Additional District Judge, Kanchipuram to number the suit in SR.No.10287 of 2019 and issue summons to the defendants or issue such other directions.

For Petitioners : Mr.T.S.Gopalan

ORDER

This Civil Revision Petition has been filed to direct the learned II Additional District Judge, Kanchipuram to number the suit in SR.No.10287 of 2019 and issue summons to the defendants therein.

2.The learned counsel for the petitioners would submit that the suit in SR. No.10287 of 2019 was filed as against the respondents/defendants seeking the reliefs of,

(a)directing the 1st defendant to pay to the 1st plaintiff a sum of Rs.4,57,652.98/- and the 2nd plaintiff a sum of Rs.4,57,652.24/- with interest on the suit claim @ 12 % compounded monthly, from the day of the plaint to the day of realization,

(b)declaring that the 1st defendant is not entitled to claim any amount by way of gratuity until such time that he pays the above refund sum of Rs.14,63,290.22/- with interest of satisfactory accounts for the said sum.

3.The learned counsel for the petitioners would further submit that the 1st defendant was holding the position of Chief Executive Officer in the office of the 1st petitioner/1st plaintiff. Further, the 1st defendant availed Travel Advance and Multi Currency Forex Card issued by HDFC Bank and he was liable to pay the same to the 1st petitioner/1st plaintiff for the aforesaid facilities. Hence, the suit has been instituted as against the defendants in the year 2019. It was returned by the learned II Additional District Judge, Kanchipuram, on the ground of maintainability of the suit.

4.Though all the returns have been complied by giving proper explanations, the learned trial Judge has not chosen either to number the plaint or to reject the plaint. Therefore, the petitioners/plaintiffs are before this Court with this Civil Revision Petition.

5.Perusal of the return made by the learned trial Judge shows that the plaint was returned for the following reasons:- The Competent Authority to decide about the payment of Gratuity is 2nd defendant; no Gratuity shall be liable to be attached and as such, how the suit is maintainable ? ; some of the amounts were due for recovery for the year 2014 - 2015 and 2015 - 2016 and therefore, it is barred by limitation and the issue of jurisdiction of Civil

Court has also been raised in the return dated 01.11.2019.

6. Reading of the plaint shows that there are two reliefs, one is against the 1st defendant to pay a specific sum to the plaintiffs 1 and 2 and the next relief is that the 1st defendant is not entitled to claim any amount by way of Gratuity until he repays the amount of Rs.14,63,290.22/-. The reason for return of the suit raised by the learned trial Judge is mainly with reference to the 2nd relief. There is no doubt with regard to the fact that the learned trial Judge, can entertain the suit, in so far as 1st relief is concerned. However, if there is any apprehension that the suit is barred under payment of Gratuity Act or any other law, the learned trial Judge should take a decision as to whether he is going to reject the plaint or number the plaint subject to deciding the issue of maintainability with regard to the 2nd relief at a later stage. But he cannot keep the plaint pending without taking a decision for a long period. Plaint was filed in the year 2019 and therefore, the learned trial Judge is directed to decide either to number the plaint or reject the plaint, whichever he deems fit and in accordance with law. This exercise shall be completed within a period of 10 days from the date of receipt of a copy of this order.

7.With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

23.08.2021

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Speaking order/Non-speaking order

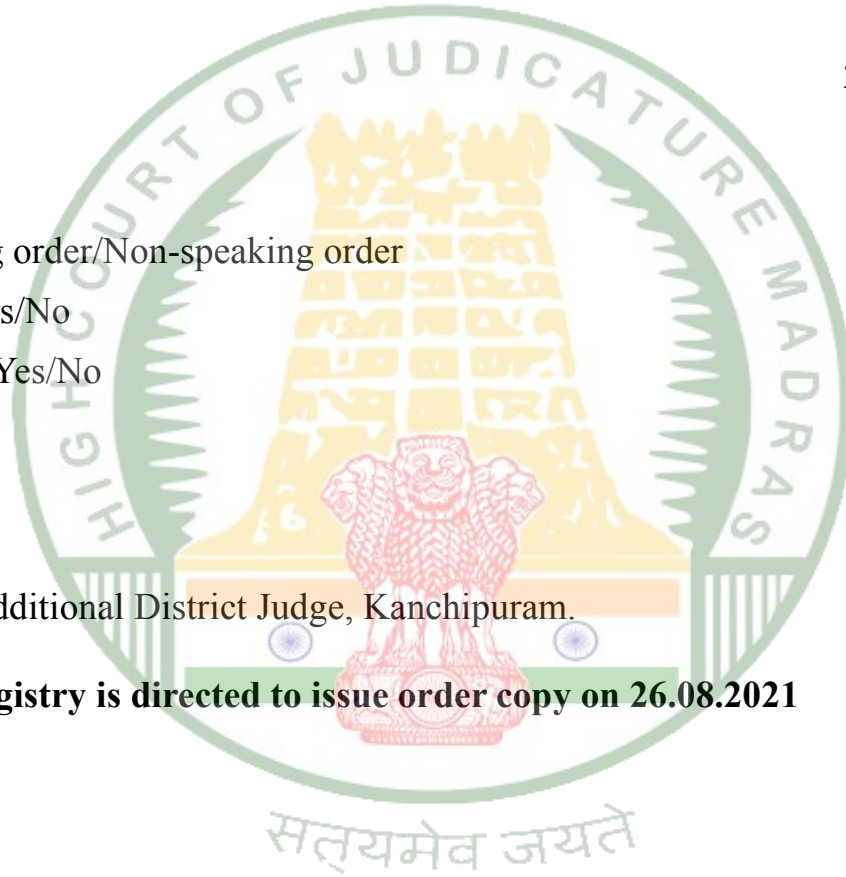
Index:Yes/No

Internet:Yes/No

To

The II Additional District Judge, Kanchipuram.

Note:Registry is directed to issue order copy on 26.08.2021



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C.R.P.(P.D).No.1697 of 2021

G.CHANDRASEKHARAN, J.,

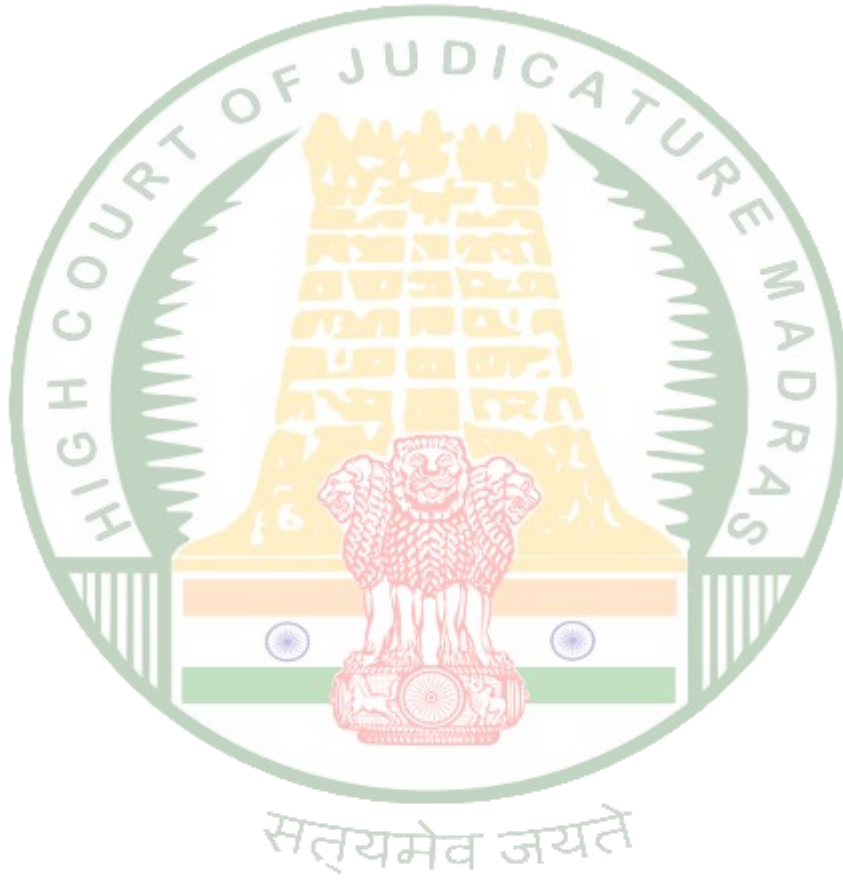
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