

**C.M.P.No.13157 of 2018
in A.S.No.571 of 2018**

**M.M.SUNDRESH, J.,
and
S.KANNAMMAL, J.,**

[Order of the Court was made by *M.M.SUNDRESH, J.*]

The respondent laid a suit for the return of the amount paid pursuant to the agreement entered into between the parties. The suit was decreed along with interest payable. Challenging the same, the present appeal has been filed.

2. Though execution petition was filed for higher amount of 40 lakhs, this Court granted the conditional order on 04.03.2019, which reads as under:-

"The defendant is the appellant. The suit has been filed for specific performance and in the alternative for return of the amount . The Trial Court awarded the alternative prayer and hence the present appeal has been filed. Seeking stay of the judgment and decree, the present petition has been filed.

2.Learned counsel appearing for the petitioner would submit that the interest component has been added and decree has been passed.

3.Learned counsel appearing for the respondent would submit that even the defendant himself has

taken the plea that the transaction is one of loan inter se parties. He has also admitted possession of the amount.

4.Considering the same, we are inclined to grant interim stay, pending disposal of the appeal on condition that the petitioner pays a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) in favour of the respondent within a period of six weeks from the date of receipt of a copy of this order. The respondent is also permitted to withdraw the amount deposited before the Trial Court by him."

3. Thereafter, another order was passed on 21.01.2021, which reads as under:-

"This Court, by a conditional order dated 04.03.2019 granted an interim stay on condition that the appellant/petitioner pays a sum of Rs.10,00,000/- to the respondent within a period of six weeks from the date of receipt of a copy of that order.

2.Learned counsel for the respondent submitted that the petitioner has not complied with the said conditional order till date, therefore, the appeal is liable to be dismissed.

3.However, learned counsel for the appellant submitted that the appellant was ready to handover the Demand Draft for Rs.10,00,000/- but the

respondent only did not receive the same. However, now he sought further time to make entire payment.

4.List the matter on 04.02.2021.”

4. Taking note of the submission made by the learned counsel appearing for the petitioner that he was ready to handover the Demand Draft, which has also not been complied with, further order was passed on 01.07.2021, expressing dis-satisfaction with the attitude of the petitioner while not extending the interim order.

5. When the matter was taken up for hearing on 22.07.2021, there was no representation on behalf of the petitioner. Obviously, non-compliance continued. Accordingly, the matter was posted 'for dismissal' on 23.07.2021.

6. On 05.08.2021, the following order was passed:-

"Despite several opportunities given to the petitioner, there is no compliance even today.

Learned counsel appearing for the petitioner submitted that the petitioner was sick and he was suffering from eye ailment. If further time is granted, he would comply with the conditional order.

Despite the fact that we are not satisfied with

the submission made, we would like to give a final indulgence by granting three weeks from today to comply with the order dated 21.01.2021.

Post the matter on 26.08.2021."

7. When the matter is taken up for hearing today, learned counsel appearing for the petitioner submitted that the petitioner is not able to make the payment. Thus, we have no other option except to dismiss this petition filed.

8. In view of the above, the miscellaneous petition stands dismissed.

9. However, considering the fervent plea of the learned counsel for the petitioner/appellant, Registry is directed to post the appeal for final hearing on 22.11.2021.

(M.M.S., J.) (S.K., J.)

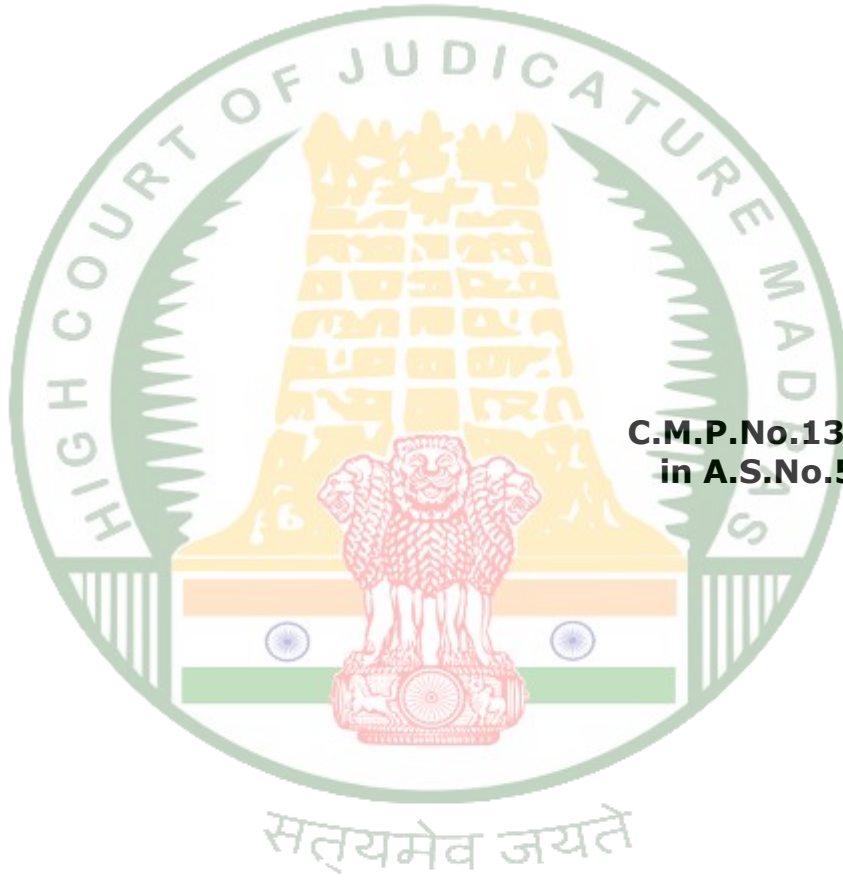
26.08.2021

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**M.M.SUNDRESH, J.,
and
S.KANNAMMAL, J.,**

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26.08.2021