



C.R.P.(MD).No.2489 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2489 of 2017

and

C.M.P(MD) No.11729 of 2017

Mani

... Petitioner/Petitioner/
2nd Defendant

-VS-

1. Shenbagam Ammal
2. S.Raja
3. S.Revathi
4. H.Raguraman

... Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 23.10.2017 made in I.A.S.R.No. 7374 of 2017 in O.S.No.295 of 2011 on the file of the learned Subordinate Judge, Tuticorin.

For Petitioner : Mr.G.Mohankumar

For Respondents : No appearance



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ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 23.10.2017 made in I.A.S.R.No. 7374 of 2017 in O.S.No.295 of 2011 on the file of the learned Subordinate Judge, Tuticorin.

2. The learned counsel appearing for the petitioner would submit that the petitioner has moved an application under Section 10 of C.P.C, to stay all further proceedings in the suit till the disposal of C.M.A.No.6 of 2014. However, the said application have been returned with an endorsement as follows:

“Returned:

*How this application is maintainable without any
order passed by the Appellate Court”*

3. Aggrieved with the said return, the learned counsel for the petitioner is before this court.



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4. Despite the names of the respondents 1 to 3 are printed in the cause list, no one appeared on behalf of them.

5. The short fact involved in this case is the prayer in respect of numbering of the application filed under Section 10 of C.P.C.

6. On perusal of the return endorsement, it is apparent that the Court below is expecting the said stay order from the appellate Court. The tenor of Section 10 of C.P.C, is on the basis that the parties should not be vexed twice, and to avoid conflicting decision. Therefore, the very return appears to be erroneous.

7. Therefore, this Court is of the view that the order passed by the trial Court on 23.10.2017 is set aside and the matter is remitted back to the Court below with a direction to number the Section 10 of C.P.C application and dispose of it according to law.



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8. In the result, this Civil Revision Petition is **allowed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: Registry is directed to return the application filed under Section 10 of C.P.C to the petitioner after receiving a certified copy from the learned counsel for the petitioner.

To
1. The Sub Court,
Thoothukudi.



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C.KUMARAPPAN,J.

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