



WEB COPY



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

A.Vijaymaharajan

.. Petitioner

Vs.

1.Kalai

2.Senior Area Manager,
Indian Oil Corporation Limited,
No.B035, Tiruveni, 2nd Floor,
Sasthri Road, Thillai Nagar,
Tiruchirapalli.

.. Respondents

Prayer: Civil Revision Petition filed under Article 226 of the Constitution of India, against the fair and decretal order dated 04.03.2024 made in I.A.No.1 of 2023 in A.S.SR.No.2083 of 2019 on the file of the Sub-Court, Nagapattinam.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mrs.Srimathi.V

For R1 : Mr.M.S.Palaniswamy
For R2 : Mr.Mohammed Fayaz



WEB COPY



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 04.03.2024 made in I.A.No.1 of 2023 in A.S.SR.No.2083 of 2019 on the file of the Sub-Court, Nagapattinam.

2.The brief facts leading to file the present Civil Revision Petition are as follows:

2.1.The 2nd respondent issued a notification for appointment of Indane Gas distributorship at Thirukuvallai Village on 29.05.2012. The 1st respondent herein belongs to the said Thirukuvallai village. Further, the petitioner and one Anbazhagan stated to be from the another village, said to have obtained the residence certificate fraudulently and got selected for the allotment of distributorship, which has been objected by the 1st respondent from the year 2013 onwards in various proceedings. Thereafter, on the basis of the revision filed by the 1st respondent, the RDO conducted enquiry and submitted a report holding that the residence certificate obtained by the Revision Petitioner is not proper. The same was challenged by the petitioner



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

herein in W.P.No.6703 of 2016, whereby, this Court directed to conduct a fresh enquiry. Thereafter, the District Collector cancelled the residence certificate of the petitioner based on the subsequent RDO report and at the same time it was informed to the 1st respondent that the petitioner has filed the suit and obtained interim order against the cancellation of distributorship in O.S.No.123 of 2016, in which, ex-parte decree also came to be passed.

2.2. The 1st respondent preferred an appeal against the order made in O.S.No.123 of 2016 as the third party, which has been allowed. Aggrieved over the same, the petitioner filed C.M.A.No.1504 of 2022 before this Court and this Court remanded the matter back to the Sub-Court and directed to number the leave application and pass final orders within a period of two months. The Sub-Court, vide order dated 04.03.2024 allowed the leave application in I.A.No.1 of 2023 and numbered the appeal. Challenging the order passed in I.A.No.1 of 2023, the present Civil Revision Petition has been filed.



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

WEB COPY

3.Mr.V.Raghavachari, learned Senior Counsel for Mrs.Srimathi, learned counsel on record for the petitioner, submitted that the application filed by the 1st respondent under Order 1 Rule 10(2) r/w 151 CPC has been treated as leave application and leave has also been granted by the Court below. Though, the petitioner filed counter, raising objection that the third party can only maintain an appeal by only seeking leave of the Court, the Appellate Court has not considered the same. Challenging the same, the present Civil Revision Petition has been filed.

4. Heard Mr.V.Raghavachari, learned Senior Counsel for Mrs.Srimathi.V, learned counsel on record appearing for the petitioner as well as the learned counsel for the respondents

5. Upon perusal, this Court is of the view that though the application has been filed under Order 1 Rule 10 (2) CPC, the main prayer sought therein, is to grant leave for filing appeal. Merely because the application filed under a wrong provision of law, the same will not take away the substantial right of the party. Therefore, when the prayer is sought for



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

WEB COPY

granting of leave and merely because a wrong provision has been quoted, it cannot be said that such application ought not to have been entertained. The Hon'ble Apex Court in the case of “***Pruthvirajsinh Nodhubha Jadeja Vs. Jayeshkumar Chhakaddas Shah & Ors.***” in ***Civil Appeal No.10521 of 2013***, has categorically held that mere mentioning of an incorrect provision, would not *ipso facto* fatal to the application when the power to pass such an order, is available with the Court.

6. Considering the above, this Court is of the view that the present Revision is not maintainable, particularly, when the order has been passed by the Appellate Court after remanding the appeal originally filed before this Court in C.M.A.No.1504 of 2022, wherein, this Court, has held that while condoning the delay, the trial Court recorded the fact that the person who is not a party to the proceeding, also can file an appeal. Further, no doubt, the fact without taking any leave application, the judgment and decree has been passed and hence, the matter has been rightly remanded back to the Appellate Court with a direction to number the leave application and pass orders.



WEB COPY



C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

N.SATHISH KUMAR, J.

rst

7. Pursuant to the order of this Court made in C.M.A.No.1504 of 2022 dated 07.09.2022, the matter has been remanded back and the leave application has been numbered and later order also came to be passed, which requires no interference as already observed above that the application filed under a wrong provision, cannot be a ground to challenge the order which was passed on merits.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024

rst

Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order

To:
The Sub-Court, Nagapattinam.

C.R.P.[NPD].No.1705 of 2024
and C.M.P.No.9028 of 2024

6/6