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C.R.P.No.2167 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2167 of 2017

Devaraj

.. Petitioner

Vs.

1.Elumalai

2.Kanniya

3.Ellappan

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the return order dated 29.04.2017 made in I.A.SR.No.2485 of 2017 in A.S.No.52 of 2010 on the file of the Sub-Court, Kancheepuram.

For Petitioner : Mr.M.Selvam

For RR1 & 2 : Served, No Appearance

For R3 : Disd. vide order dated 10.02.2023

ORDER

This Civil Revision Petition has been filed by the 3rd respondent in A.S.No.52 of 2010.



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2. A suit had been filed in O.S.No.18 of 2007. The said suit had been dismissed by the trial Court in and by way of its judgment dated 13.07.2010. The plaintiff had preferred an appeal before the learned Subordinate Judge in A.S.No.52 of 2010. The said appeal was allowed on 14.02.2013.

3. In the said proceeding, the 3rd respondent/civil revision petitioner herein remained *ex parte*. On coming to know that the appeal had been allowed, he took out an application in I.A.SR.No.2485 of 2017. The said application was not numbered but was repeatedly being returned seeking orders on maintainability. This Court in the judgment of ***Selvaraj and Ors. v. Koodankulam Nuclear Power Plant India Limited and Ors.*** [(2021) 4 CTC 539] has held that the question of maintainability is a matter that requires judicial orders and it cannot be sought to be disposed off during the time of numbering the application.

4. Applying the said dictum to the facts of the present case, I find that the learned Judge has not numbered the application but has asked detailed question on maintainability which has to be gone into only after the application is numbered and taken up for disposal.



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5. Accordingly, the Civil Revision Petition stands allowed. The learned Subordinate Judge at Kancheepuram is requested to number the application in I.A.SR.No.2485 of 2017 and issue notice to the other side and thereafter, pass appropriate orders including those on maintainability.

6. The Registry is directed to return the original of the application filed under Order XLI Rule 21 of the Code of Civil Procedure to the learned counsel for the petitioner to enable him to represent the same before the Court. In case, the application is represented within a period of 30 days from the time it is received by the learned counsel, the lower Appellate Court shall not insist on any application to condone the delay on representation.

01.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note to Registry : Return the original petition in I.A.SR.No.2485 of 2017 to the learned counsel for the petitioner after taking necessary endorsement.



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V. LAKSHMINARAYANAN, J.

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To

The Sub-Court,
Kancheepuram

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