



C.R.P.[NPD].No.4774 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4774 of 2024 & CMP.No.26728 of 2024

P.Thirupurasundari

. . . Petitioner

Versus

C.H.Sathish

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the order dated 11.11.2024 passed by the learned III Additional City Civil Court, Chennai in I.A.No.2 of 2024 in A.S.No.309 of 2024.

For petitioner : Mr.D.Magesh

ORDER

This revision has been filed challenging the Order of the first appellate Court declining to grant stay of the decree and judgment dated



C.R.P.[NPD].No.4774 of 2024

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17.08.2023 passed in O.S.No.5332 of 2022.

2. The suit in O.S.No.5332 of 2022 has been filed for recovery of a sum of Rs.2,66,000/- along with interest. It is stated in the plaint that the defendant/revision petitioner has borrowed the money has handloan and on repeated request, the plaintiff/respondent issued a cheque. The cheque was dishonoured on presentation and hence, the suit was filed. After contest, a decree has been passed for a sum of Rs.2,66,000/- together with the interest @ 6%. As against which, an appeal has been filed in A.S.No.309 of 2024. In the appeal, an application has been filed to stay the operation of decree and judgment passed in O.S.No.5332 of 2022. The said application has been rejected stating that trial Court records have not been received and without perusing the records, the Court cannot consider whether the petitioner is entitled to stay. Challenging the same, the present revision petition has been filed.



C.R.P.[NPD].No.4774 of 2024

WEB COPY

3. Heard the learned counsel for the petitioner and perused the entire materials placed on record.

4. The impugned Order has been passed mainly on the ground that the records have not been received from the trial Court and therefore, stay has not been granted. This Court is of the view that if the records have not been received from the lower Court, the appellate Court ought to have directed the appellant to produce the certified copy of the documents. Hence, the impugned Order clearly indicate non application of mind and the trial Court has not applied its mind and exercised its discretion properly. In such view of the matter, the impugned Order has to be set aside.

5. Accordingly, this Civil Revision Petition is allowed and the impugned Order dated 11.11.2024 passed in I.A.No.2 of 2024 in A.S.No.309 of 2024 is set aside and the learned III Additional Judge, City Civil Court, Chennai is directed to rehear the application and if the certified copy of the documents are produced, the same can be considered and pass



C.R.P.[NPD].No.4774 of 2024

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fresh Orders on its own merits. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2024

Index : Yes / No

Internet: Yes

Speaking/non speaking order

dhk

To

The III Additional Judge

III Additional City Civil Court, Chennai



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C.R.P.[NPD].No.4774 of 2024

N. SATHISH KUMAR, J.

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C.R.P.[NPD].No.4774 of 2024

25.11.2024