



C.R.P(MD)No.2114 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2114 of 2019

and

C.M.P(MD)No.11021 of 2019

1.Gomathi Sankar

2.G.Kowsalya

...Petitioners/Petitioners/
Defendants 1 & 2

Vs.

A.Utchimakali

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned fair and decreetal order dated 01.07.2019 passed by the learned I Additional District Judge, Tirunelveli in I.A.No.2 of 2019 in O.S.No.6 of 2016.

For Petitioners : Mr.N.Dilip Kumar

For Respondent : Mr.T.Selvan

ORDER

This civil revision petition has been filed against the order passed by the learned I Additional District Judge, Tirunelveli in I.A.No.2 of 2019 in O.S.No.6 of 2016, dated 01.07.2019.



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2. The petitioners are the petitioners/defendants 1 and 2 and the respondent is the respondent/plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the Trial Court.

4. The brief facts which give rise to the filing of the instant civil revision petition is that, the respondent/plaintiff has filed a suit for recovery. The first petitioner/first defendant has filed M.L.O.P.No.195 of 2015, and that both the suit as well as M.L.O.P. was tried together. It appears that when the matter was posted for cross-examination of P.W.1, the petitioner has cross-examined the plaintiff on 22.12.2017 and on 18.01.2018. On perusal of the deposition which was recorded on 18.01.2018 at the bottom of the cross-examination, it has been observed as follows:

"மேலும் ஆவணங்களை பரிசீலனை செய்ய
வேண்டியிருப்பதால் வேண்டுகோளுக்கிணங்க
ஒத்திவைக்கப்படுகிறது."

5. At this juncture, it appears that the Court below has directed the defendants to give interrogatories to the plaintiff and the interrogatories



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were also answered by the plaintiff on 29.01.2018. In the meanwhile, the Trial Court without the cross examination of the plaintiff has closed the evidence of plaintiff on 09.10.2018. Thereafter, closed the evidence of defendants on 10.12.2018. It appears that the petitioners/defendants 1 and 2 have filed two applications, to re-open and to recall P.W.1. Whereas, the re-open petition to re-open the defendants side evidence was allowed in I.A.No.1 of 2019. However, the re-call petition to re-call P.W.1 was dismissed in I.A.No.2 of 2019.

6. Aggrieved with the order of the learned Trial Judge in I.A.No.2 of 2019, the petitioners herein are before this Court.

7. The learned counsel for the petitioners vehemently submits that, though they have given an interrogatory as directed by the Court below, the plaintiff has given an evasive reply. Therefore, the cross-examination of the P.W.1 would only bring truth of the matter.

8. When the application was resisted by the plaintiff, the learned Trial Judge has dismissed the application for re-call on the ground that there was a delay on part of the petitioners, and also found that when there were 100 questions were put to the respondent by way of



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interrogatories, nothing left for the further cross-examination of P.W.1, and that after the interrogatories, there is no element of surprise for cross-examination and has ultimately dismissed the application.

9. The learned counsel for the petitioners invited the attention of this Court in respect of Order 18 Rule 4 (3) of C.P.C., and would submit that the cross-examination, re-examination of the witnesses have to be done in the presence of learned Judge or Commissioner. Therefore, the interrogatory cannot be equated with that of the cross-examination.

10. The very submission of the learned counsel for the petitioner sounds positively. It is true that the mere answer to the interrogatory cannot be equated with that of the cross-examination. Further, unless the witness being confronted on the basis of the fact in issue, the real truth cannot be brought out. Here, admittedly, the cross-examination was at the part heard stage. But due to subsequent development of furnishing interrogatories, the P.W.1 evidence was closed.

11. Therefore, the findings of the Court below that in view of the interrogatories that there could not be any element of surprise for the cross-examination, could not be the justifiable reason for rejecting the



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application for recall. However, apart from the above reason, the learned Trial Judge has also stated the conduct of the defendants as reasons for rejection of recall application. One such reason is that the delay caused by the petitioners and the hardship faced by the respondent/plaintiff. This Court is in full agreement with the finding of the Court below. However, we can compensate the hardship faced by the plaintiff by imposing cost.

12. Therefore, this Court is of the view that the hardship faced by the respondent/plaintiff could be compensated by imposing cost to the petitioners. Thus, the petitioners are directed to pay Rs.3,000/- (Rupees Three Thousand only) to the respondent/plaintiff as cost within a period of four weeks from the date of receipt of the copy of this order. on payment of cost, the Court below is directed to post the case for cross-examination of P.W.1 and directed to complete within two weeks thereafter. The petitioners are also directed to cross-examine the P.W.1 on any two days given by the learned Trial Judge during the above period. If the petitioners are not cross-examining the P.W.1 as per the above direction, then the trial Court is at liberty to proceed with the case according to law.



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13. In the result, this Civil Revision Petition stands **allowed** with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The learned I Additional District Judge,
Tirunelveli.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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