

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRP.PD.No.4171 of 2011

and

M.P.No.1 of 2011 & M.P.No.1 of 2013

1.K.B.Pushpavathy
2.K.V.Bhaskar Naidu

...

Petitioners

– Vs –

The Kilpauk Benefit Society Ltd.,
Rep.by its Secretary Mr.M.K.S.Bava
No.82, New Avadi road, Kilpauk,
Chennai – 10.

...

Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 30.09.2011 made in I.A.No.401 of 2011 in O.S.No.294 of 2007 on the file of the learned Principal District Judge, Thiruvallur, imposing onerous condition of direction to deposit the suit cost in allowing the petition to reopen and recall P.W.1 for cross examination, and prays that the conditional order be set aside.

For Petitioners : Mr.P.Anbarasan
for Mr.K.Chairman Selvaraj

For Respondent : Ms.V.S.Sowmya
for Ms.N.Rosi Naidu Associates

ORDER

-

This memorandum of civil revision petition is directed against the order dated 30.09.2011 and made in the interlocutory application No.401 of 2011 in O.S.No.294 of 2007 on the file of the learned Principal District Judge, Thiruvallur.

2. The civil revision petitioners herein are the defendants in the suit in O.S.No.294 of 2007, whereas, the respondent herein is the plaintiff. It appears from the records that the respondent/plaintiff filed the suit for getting a preliminary decree in respect of a mortgage to an extent of Rs.14,46,161.80/- together with interest at 21.6% p.a on the principle amount of Rs.8,76,678/-.

3. It is manifested from the records that the trial was commenced in the above suit and P.W.1 was examined. But, on that day, according to the revision petitioners, despite the suit was passed over, it was taken up and proceeded in the absence of the

petitioners' counsel as he was not able to appear. However, the revision petitioners/defendants have come forward in the later stage with the above I.A.No.401 of 2011 to recall P.W.1 and to reopen the plaintiff's side evidence, so as to enable them to further cross examine the plaintiff. That petition was allowed on payment of suit cost, which according to Mr.P.Anbarasan, learned counsel for the petitioners, comes around more than 1 lakh Rupees.

4. The learned counsel for the respondent, Ms.V.S.Sowmya appearing for M/s.N.Rosi Naidu Associates has vehemently opposed to allow this petition and she has also urged this Court to dismiss the petition with an exemplary cost.

5. This Court, however, finds that the cost imposed by the learned trial judge was on the higher side and therefore, to meet the ends of justice, this Court is of view that the petition in I.A.No.401 of 2011 could be allowed on payment of cost of Rs.5,000/- to be paid by the revision petitioner directly to the respondent before the Court below.

6. With this direction, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed. The impugned order dated 30.09.2011 is modified to an extent of Rs.5,000/- to be paid by the revision petitioners to the respondent directly before the Court below within a period of 15 days from the date of receipt of a copy of this order and further, the learned trial judge viz., the learned Principal District Judge, Thiruvallur, is directed to dispose of the suit in O.S.No.294 of 2007 on or before 31.08.2015 without seeking further time.

24.03.2015

Index : Yes / No
Internet : Yes / No
sms

To

1. The Kilpauk Benefit Society Ltd.,
Rep.by its Secretary Mr.M.K.S.Bava
No.82, New Avadi road, Kilpauk,
Chennai – 10.
2. The Hon'ble Principal District Judge,
Thiruvallur,

T.MATHIVANAN,J.

sms

**CRP.PD.No.4171 of 2011
and
M.P.No.1 of 2011 & M.P.No.1 of 2013**

24.04.2015