

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALYANASUNDARAM**

CRP.PD.No.836 of 2015

and

M.P.No. 1 of 2015

Unnamalai

... Petitioner

Vs.

1. The Correspondent,
Montford Community Primary School,
Koravankadu, Yercaud Taluk,
Salem District
2. The Branch Manager,
New India Assurance Company Ltd,
2nd Floor, Door No.2/91, 162A,
Sri Shopping Mall, New Bus Stand,
Meyyanur, Salem 636 004
3. Govindaraj
4. National Insurance Company Ltd,
Mahalakshmi Nivasa,
Opp to Kiruba Hospital,
Kumarasamipatti, Rajaji Road,
Post Box No.15, Salem
by its Branch Office, Paramathy Road,
Namakkal Town, Namakkal Taluk.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 Constitution of India against the order dated 03.02.2015 in I.A.No. 58 of 2015 in M.C.O.P.No.71 of 2013 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) Namakkal.

For Petitioner : Mr.R. Nalliyappan

O R D E R

The civil revision petition is directed against the order dated 03.02.2015 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal, in I.A.No. 58 of 2015 in M.C.O.P.No.71 of 2013.

2. The Claimant in M.C.O.P.No.71 of 2013 is the petitioner herein. The petitioner has filed a petition claiming compensation of Rs.5,00,000/- for the injury said to have been sustained in the motor accident on 01.11.2012. The respondents have entered their appearance and they have been contesting the case.

3.The Trial in the original petition along with the other claim petitions, have commenced trial on 22.10.2013. The petitioner has examined nine witnesses and the respondents have examined R.W.1 and after arguments of the respondents were over, the petitioner has filed I.A.No.58 of 2015 under Section 151 of Civil Procedure Code to re-open the case, to examine one Anjala, who sent complaint to the Superintendent of Police, Salem, on 04.12.2012. The application was opposed by the respondents. The Trial Court dismissed the petition. Aggrieved by the order, the present civil revision petition is filed.

4.Mr.R.Nalliyappan, learned counsel for the petitioner submitted that the petitioner is the claimant under the Motor Vehicles Act, which is beneficial legislation and he should be given an opportunity

to establish his case. The learned counsel further submitted that the witness proposed to be examined by the petitioner is the complainant in this case and unless she is examined, the petitioner could not prove the negligence of the respondents.

5. It is seen that the trial in this case had commenced on 22.10.2013 and the claimants have already examined nine witnesses to prove their case. The respondents had also examined one witness on their side and when the case was posted for arguments, the petitioner has filed an application.

6. The Judgment of the Hon'ble Supreme Court reported in ***(2013) 14 SCC 1, (Bagai Construction through its proprietor Lalit Bagai Vs. Gupta Building Material Store)***, wherein, in Paragraph 14 and 15 reads as follows:

"14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not

placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on records by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words at any stage occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of Court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.

15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that Courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further show that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is

***not permissible even with the aid of Section 151
CPC.”***

6. In the light of the judgment of the Hon'ble Apex Court and considering the facts and circumstances of the case, I do not find any illegality or irregularity in the impugned order.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2015

Index : Yes/No
Internet : Yes/No
sms/srn

To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

K.KALYANASUNDARAM,J.

sms

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