

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

**CORAM :
THE HONOURABLE MR. JUSTICE T.MATHIVANAN**

**C.R.P(PD).No.1121 of 2012
and
M.P.No.1 of 2012**

Paster A.Samuel Ramaswamy

... Petitioner

Vs.

M/s.Non-Denominational Association,
of Interdependent Church,
By its President Rev.Samuel,
D.Stephens

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decretal order dated 20.11.2012 and made in I.A.No.577 of 2011 in O.S.No.274 of 2006, on the file of the learned Subordinate Judge, Salem.

For Petitioner : Mr.R.Nagasundaram

For Respondent : Mr.T.P.Prabakaran

ORDER

This memorandum of civil revision petition is directed against the fair and decretal order dated 20.11.2012 and made in I.A.No.577 of 2011 in O.S.No.274 of 2006,on the file of the learned Subordinate Judge, Salem.

2. The plaintiff in O.S.No.274 of 2006 is the revision petitioner herein, where as, the defendant is the respondent herein.

3. It is manifest from the records that the revision petitioner has filed the suit in O.S.No.274 of 2006, on the file of the Sub Court, Salem as against the respondent herein seeking the relief of damages and directing the respondent to pay a sum of Rs.4,00,000/- towards damages sustained by the petitioner and also for costs. The respondent contested the suit by filing his written statement. After formulating necessary issues, for better adjudication of the suit, the process of recording the evidence of both sides were commenced and completed. Subsequently, the revision petitioner being the plaintiff has taken out an application in I.A.No.577 of 2011 under Order XVI Rule 2 of C.P.C. to issue subpoena to the respondent/defendant, President to appear before the trial court to give evidence for the purpose of proving his case. This petition was strongly resisted by the respondent by filing his counter statement.

4. After hearing both sides, the learned Trial Judge has proceeded to dismiss the application in I.A.No.577 of 2011 on

20.01.2012 on the ground that to prove the case of the revision petitioner/plaintiff, the respondent's society's, President need not be examined.

5. It is also the observation of the learned Trial Judge that since the suit is pending for the past five years, the witness who was sought to be examined on the side of the plaintiff, is not necessary. Having been aggrieved by the order, the present revision is filed.

6. Heard Mr.R.Nagasundaram, learned counsel appearing for the revision petitioner and Mr.T.P.Prabakaran, learned counsel appearing for the respondent.

7. Insofar as, this revision is concerned, Order XVI Rule 1 (2) of C.P.C. is very much relevant which is extracted hereunder.

Order XVI Rule 1(2):

A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned “.

8. It envisages that a party who desirous to obtain any summons for the attendance of any person shall file an application before the Court stating therein the purpose for which the witness is proposed to be summoned. On coming to paragraph-2 of the affidavit of the revision petition which is filed in support of the application in I.A.No.577 of 2011, it is stated that the facts of the damages sustained by him will be elicited only through the defendant and not by his representatives. Even in the prayer also it is stated that it is the very purpose for which, he happened to file the application under Order XVI Rule (1) 2 of C.P.C.

9. Now Mr.R.Nagarsundaram, learned counsel appearing for the revision petitioner has submitted that without understanding the principle laid down under Order XVI Rule 1(2) of C.P.C., the trial Judge had gone to an extent of disposing the application and the reason assigned by the Trial Judge that simply because it is pending for the past five years there is no need to examine any more witness is not sufficient to dismiss the application.

10. Mr.T.P.Prabakaran, learned counsel appearing for the respondent has submitted that the revision petitioner being the plaintiff should stand on his own leg to prove his own case. Instead, he could not summon the defendant society's President, whose presence did not require. He has also submitted that the court below was absolutely right in disposing the application which according to him, did not require any interference.

11. This Court heard the submissions made by both sides. Now the process of recording of evidence on both sides is completed and the suit has come to the stage of advancing arguments. Only at this stage, that application was filed by the revision petitioner/plaintiff and since it was dismissed, this revision is preferred before this Court and because of the stay granted at the time of admission of this revision, further proceedings of the suit are stayed.

12.Sub Rule (2) of Rule 1 of Order 16 envisages that for the attendance of any person, a party who desirous after obtaining any summons shall file an application in the court specifying the purpose for which, the witness is proposed to be summoned. From the

provision of Sub Rule (2) of Rule 1 of Order 16, it is understood that a party who desirous of obtaining any summons shall file an application in the court stating the purpose for which, the witness is proposed to be summoned.

13. Sub Rule (3) of Rule 1 contemplates that on receipt of such application, the Court may for reasons to be recorded permit a party to call, any witness other than, those whose names appear in the list referred to in Sub Rule (1), by summoning through court or otherwise, if such party shows sufficient cause for the omission to mention the name of such witness in the said list. As per Sub Rule (2) of Rule 1, a party to the suit is conferred with a right to file an application to obtain summon for attendance of any person, i.e. the word "shall " as used in Sub Rule (3) of Rule 1, contemplates that the Court may permit a party to call, either by summoning through Court or otherwise, any witness, for reasons to be recorded, if such party shows sufficient cause.

On coming to the instant case on hand, the revision petitioner has shown sufficient cause in his application in I.A.No.577 of 2011 to summon the President of the respondent's association. Despite

the purpose of summoning the witness has been stated in the petition, the learned trial Judge has simply proceeded to dismiss the application, which is against the settled proposition of law.

14. In view of the above facts, this revision petition is allowed and the impugned order dated 20.11.2012 is set aside and the Lower Court is directed to issue subpoena to the President of the respondent's society and also directed to dispose of the suit after completion of all the formalities within a period of two months from the date of receipt of a copy of this order.

With the above direction, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

04.09.2015

Index :Yes/No
Internet :Yes/No
kkd

To

The Sub Court,
Salem.

T.MATHIVANAN,J.,

kkd

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