

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).Nos.1616 & 1617 of 2014

and

M.P.No.1 of 2014

C.R.P.(PD).No.1616 of 2014

L.Eswari
W/o.Loganathan

.. Petitioner/Petitioner/Defendant

Vs.

Yasotha
W/o.Gunadharan
Rep. by her Power Agent
D.Ravikumar
S/o.Deivasigamani

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.02.2014 made in I.A.No.641 of 2013 in O.S.No.307 of 2008 on the file of the learned II Additional District Court (Full additional incharge), Erode.

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For Petitioner
in both CRP's : Mr.N.Manokaran

For Respondent
in both CRP's : Mr.K.Ramu

COMMON ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

2. These Civil Revision Petitions have been filed challenging the impugned orders dated 04.02.2014 made in I.A.No.641 of 2013 and I.A.No.642 of 2013 in O.S.No.307 of 2008, wherein the applications filed reopen the evidence and to recall P.W.1 and P.W.2 for the purpose of further examination and to mark some documents came to be dismissed.

3. The learned counsel appearing for the petitioner would submit that the respondent herein as plaintiff has filed the suit for recovery of money due on a promissory note. While so, when the matter was in part-heard stage, the revision petitioner/defendants filed the applications to reopen and to recall P.W.1 and P.W.2 stating that she need to mark some more documents. However, the said applications were dismissed and as against the same, these Civil Revision Petitions have been preferred.

4. To substantiate his contention, the learned counsel for the petitioner relied upon the decision reported in **(2011) 11 Supreme Court Cases 275, K.K.Velusamy v. N.Palanisamy**, wherein it was held that in order to render substantial justice, the Court shall not take

into consideration the aspect of delay alone and an opportunity must be given to the parties to put forth their case. It is appropriate to incorporate paragraph 15 of the said decision.

"15. The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in

exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.”

The learned counsel would further submit that except the reason of delay, no other reason has been assigned for dismissing the applications. However, the Trial Court had dismissed the applications without considering the merits of the same and hence, the learned counsel for the revision petitioner prayed for setting aside the impugned orders.

5. Resisting the same, the learned counsel for the respondent would submit that after the argument of the defendant was heard and when the matter was posted for plaintiff/respondent reply argument, the revision petitioner/defendant had come forward with the applications to reopen and recall P.W.1 and P.W.2. However, the learned counsel for the respondent also fairly conceded that the aspect of delay alone is not a criterion for dismissing the applications.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. Applying the dictum laid down in **(2011) 11 Supreme Court Cases 275, K.K.Velusamy v. N.Palanisamy**, I am of the view that the Court has to consider the merits of the matter and shall not dismiss the applications using a straitjacket formula. In the instant case, the defendant had raised the plea that the suit promissory note is not supported by consideration. Furthermore, on perusal of the written statement would show that the defendant had disputed the signature found in the document. However, when the same was sent to the forensic department, it was found that the signature in the promissory note is true and genuine. While so, now the defendant had taken another defence that the suit promissory note is not supported by consideration.

8. At this juncture, it would be appropriate to incorporate the averments made in paragraph 3 of the application to reopen and recall.

"3. I submit that there was no consideration for the

suit promissory notes. The respondent has not produced any statement of accounts. In fact, I have given a memo to the respondent to cause production of the documents. According to case of the plaintiff, I have borrowed a sum of Rs.10,00,000/- on 29.11.2001 and executed a promissory note and two instruments. In this regard, the respondent has already filed a suit in O.S.No.173 of 2004 before the Subordinate Judge of Gobichettipalayam. Subsequently, it is alleged by her that I have executed confirmation document agreeing to repay Rs.15,00,000/- and executed the suit promissory notes. In view of the said circumstances, I have given a memo to the respondent to cause production of the bank pass book of the respondent commencing from the year 2001 till 17.11.2005; the statement of accounts pertaining to the bank account of the respondent commencing from the year 2001 till 17.11.2005 and the income tax returns from the year 2001 till 2005. But in the mean while, the evidence on the side of the plaintiff was closed. Therefore, for the purpose of production of the documents, examination of the witness and to mark the documents, the evidence on the

side of the plaintiff is to be reopened. Hence, I am filing this application for reopening the evidence of the plaintiff. Otherwise, I will be put to irreparable loss and hardships."

9. Admittedly, the revision petitioner/defendant had not filed any document to be marked through P.W.1 and P.W.2 to prove that the suit promissory note is not supported by consideration. Further, it is pertinent to note that the Trial Court in paragraph 17 of the judgment has held that the petitioner herein had already filed applications in I.A.Nos.554/2012 and 550/2012 to reopen and recall P.W.1. Those applications were allowed and the defendant was permitted to cross-examine in detail. It is appropriate to incorporate paragraph 17 of the order passed by the Trial Court.

"17. Pertinent it is to mention here that similar petitions were filed with regard to P.W.1 by this defendant in I.A.No.554/2012 and I.A.No.550/2012 after the completion defendant side evidence and they were allowed on 04.04.2013 and consequently P.W.1 was recalled and again cross examined in detailed manner. So, it is clear that for the 2nd time such petition is filed with the same plea but to recall P.W.1 and P.W.2 for further cross

examination.”

10. Thus, it is very clear that only with a view to drag on the proceedings, the revision petitioner/defendant had filed the present applications to reopen and recall, after the argument on the side of the defendant is completed. Hence, I am of the view that the Trial Court has considered these aspects in proper perspective and came to a correct conclusion and I do not find any reason to interfere with the order passed by the Trial Court.

11. In fine, these Civil Revision Petitions are dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs. However, the Trial Court is directed to dispose of the suit in O.S.No.307 of 2008 within a period of one month from the date of receipt of a copy of this order.

06.01.2016

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To

The learned II Additional District Court
(Full additional incharge),
Erode.

R.MALA, J.

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Dated : 06.01.2016