

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] Nos.4758 & 4759 of 2015
and M.P.No.1 of 2015
in C.R.P.[PD] No.4758 of 2015

A.K.Nawaz

... Petitioner
in both CRP

Vs.

1.Kalpana
Rep. by her power of attorney
P.Padmanabhan

2.S.Krishnaswamy

... Respondents
in both CRP

Prayer in C.R.P.No.4758 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order of the Hon'ble Principal District Munsif Court, Alandur in IA.No.999 of 2014 in OS.No.163 of 2005 dated 06.07.2015.

Prayer in C.R.P.No.4759 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order of the Hon'ble Principal District Munsif Court, Alandur in IA.No.1000 of 2014 in OS.No.163 of 2005 dated 06.07.2015.

For Petitioner : Mr.T.Easwaradhas
in both CRP
For 1st Respondent : Mr.S.Sivashanmugam
in both CRP for Mr.P.D.Audikesavalu

COMMON ORDER

The 1st defendant in the original suit in OS.No.163 of 2005 on the file of the Principal District Munsif, Alandur is the petitioner in the revision. The said suit filed by the 1st respondent herein and another suit filed by the petitioner herein in OS.No.219 of 2005 are being tried jointly. The Power Agent of the 1st respondent/

plaintiff in OS.No.163 of 2005 figured as PW1 was cross-examined at length. However, the cross-examination was not concluded and due to the failure to complete the cross-examination, the trial court suo motu closed the evidence of PW1. Subsequently, with a gap of six days, the petitioner herein/defendant in OS.No.163 of 2005 filed two applications in IA.Nos.999 of 2014 and 1000 of 2014 to re-open the case for further evidence of PW1 and to recall PW1 for further cross-examination respectively.

2. The learned trial judge, after hearing, dismissed both the applications and the petitioner has come forward with CRP.No.4758 of 2015 against the order of dismissal of IA.No.999 of 2014 and CRP.No.4759 of 2015 against the order of dismissal of IA.No.1000 of 2014.

3. It is reported by the learned counsel for the petitioner as well as the 1st respondent that the 2nd respondent remains *ex-parte* in the suit itself. The matter stands listed today 'for admission'.

4. Submissions made by Mr.T.Easwaradhas, learned counsel for the petitioner in both the Civil Revision Petitions and Mr.S.Sivashanmugam, learned counsel for the 1st respondent in both the Civil Revision Petitions are heard.

5. The alleged ill health on the part of the petitioner is sought to be projected as the reason for the failure to complete the cross-examination of PW1 within the time granted by the Court. The fact remains that the petitioner is represented by a counsel in both the suits and the counsel alone cross-examined

PW1. For such cross-examination, the presence of the 1st respondent was not necessary. However, realising the weakness of his case, the learned counsel for the petitioner simply seeks the indulgence of the Court to give one more opportunity to the petitioner to cross-examine PW1. Learned counsel for the 1st respondent, besides pointing out the fact that the petitioner's counsel took about thirteen adjournments to cross-examine PW1 and then cross-examined PW1 extensively, which will be obvious from the fact that the evidence of PW1 in the cross-examination runs to eleven pages, would submit that despite the said fact, the 1st respondent will be inclined to concede the prayer of the petitioner, provided the 1st respondent is compensated with cost and a direction for the completion of the cross-examination in one day and a further direction for the disposal of the suit within a time to be fixed by this Court are issued.

6. The learned counsel for the petitioner submits that the petitioner is prepared to part with an amount as cost that may be fixed by the Court. He also submits that the petitioner is ready to complete the cross-examination of PW1 on a date to be fixed by the Court. Learned counsel for the petitioner also is agreeable for incorporating a direction for the disposal of the suit within a time to be fixed by this Court.

7. Taking into consideration the above submissions made on both sides, this Court comes to the conclusion that the petitioner can be provided with another chance to cross-examine PW1 and at the same time, the 1st respondent shall be compensated with a cost of Rs.5,000/- [Rupees five thousand only]. Accordingly, both the Civil Revision Petitions are allowed. The petitioner in the Civil Revision

Petitions shall pay a sum of Rs.5,000/- to the 1st respondent as cost on or before 24.03.2016, on which day, PW1 shall be present in the court below for being cross-examined. The cross-examination of PW1 shall be completed at that day itself. In any event, if PW1 fails to present himself on 24.03.2016 for being cross-examined, the trial court shall fix another date convenient to the parties, on which day, the cross-examination of PW1 should be completed. In any event, the suit should be disposed of within eight weeks from today. No costs. Consequently, connected Miscellaneous Petition is closed.

17.02.2016

Index : Yes/No
Internet : Yes/No

gya

Note : Issue order copy by 18.02.2016

To
The District Munsif Court,
Alandur.

P.R.SHIVAKUMAR, J.

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