

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.993 OF 2015
AND MP NOS.1 AND 2 OF 2015

Kadirvelu Pillai

... Petitioner

Versus

V.Arjunan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the Learned Principal Sub Judge at Puducherry dated 24.10.2014 passed in I.A.No.354 of 2013 in O.S.No.167 of 2004.

For Petitioner : Mr.T.K.Ramkumar
for M/s.Ram and Rajan & Associates

For Respondent : Mr.A.V.Arun

ORDER

This Civil Revision Petition is directed against the order

dated 24.10.2014 in I.A.No.354 of 2013 in O.S.No.167 of 2004 wherein and whereby, the learned Principal Sub Judge, Puducherry, dismissed the application filed by the petitioner to recall P.W.1 to P.W.3 for further cross examination.

2. The respondent instituted a suit in O.S.No.167 of 2004 before the Principal Sub Court, Puducherry, for specific performance on the strength of a sale agreement stated to have been executed by the petitioner.

3. The suit was resisted by the petitioner, wherein a contention was taken that he has not executed the document in question. The Trial Court decreed the suit.

4. The matter was taken on appeal in A.S.No.645 of 2008 before this Court.

5. Before this Court, a third party filed an application to implead him as a party to the appeal on the ground that there was an agreement entered into with the respondent with respect to the sale of the suit property. The application was dismissed.

6. This Court considered the first appeal and ultimately, the matter was remanded for fresh consideration.

7. The petitioner, after remand, filed an application in I.A.No.34 of 2013 to receive documents. The said application was allowed by the Trial Court. The documents were marked as Exs.B8 to B18. The matter was unsuccessfully challenged before this Court by the respondent.

8. Thereafter, the petitioner filed an application in I.A.No.354 of 2013 to recall P.W.1 to P.W.3 for further cross examination. According to the petitioner, those witnesses were not examined properly and as such, they should be recalled for the purpose of further cross examination. The application was opposed by the respondent.

9. The learned Trial Judge dismissed the application with an observation that no such liberty was given by the First Appellate Court and as such, there was no question of recalling P.W.1 to P.W.3 for further cross examination. The said order is under challenge in this Civil

Revision Petition.

10. The learned counsel for the petitioner contended that third party has filed a petition in M.P.No.1 of 2010 before this Court in A.S.No.645 of 2008 contending that subsequent to the sale agreement made in favour of the respondent, he entered into a sale agreement, agreeing to purchase the suit property. According to the learned counsel, it was only to prove that there was a subsequent transaction involving the respondent and a third party with respect to the very same subject matter, the petitioner filed the application to recall P.W.1 to P.W.3 for further cross examination.

11. The learned counsel for the respondent justified the order passed by the learned Trial Judge. According to the learned counsel, no such permission was granted by the First Appellate Court to recall the witnesses for further cross examination. According to the learned counsel, liberty was granted to lead additional evidence and that would not cover the application for recalling witnesses already examined.

12. There is no dispute that originally the learned Principal Sub Judge, Puducherry, decreed the suit filed by the respondent in

O.S.No.167 of 2004.

13. The petitioner took up the matter before this Court in A.S.No.645 of 2008. This Court found that the request made by the petitioner to examine the handwriting expert was rejected without any valid reason. This Court, while allowing the appeal and remanding the matter for consideration before the Trial Court, permitted the parties to file appropriate application to adduce additional evidence.

14. It is a matter of record that during the currency of the appeal before this Court, a petition was filed by a third party to implead him as a party to the appeal on the ground that he entered into an agreement with the respondent to purchase the plaint schedule property.

15. The petitioner after remanding the matter to the Trial Court, filed the application to receive the documents. According to the petitioner, those documents are essential to prove the case pleaded by him to the effect that the respondent has not been ready and willing to perform his part of the contract.

16. The petitioner filed an application in I.A.No.354 of 2013

to recall P.W.1 to P.W.3 for further cross examination.

17. The petitioner wanted to put few more questions to P.W.1 to P.W.3 and for the said purpose, the application was filed to recall them. The affidavit filed in support of the application does not contain any indication as to whether the intention was to cross examine P.W.1 to P.W.3 with respect to the documents. However, during the course of hearing, the learned counsel for the petitioner contended that it was only to put questions relating to the documents marked as Exs.B8 to B18, the application in question was filed.

18. The petitioner produced string of documents and the same were marked as Exs.B8 to B18. According to the petitioner, those documents are necessary to prove that the respondent has not been ready and willing to perform his part of the contract and as such, he is not entitled to the equitable relief of specific performance. The documents cannot be relied on to prove the case pleaded by the petitioner unless the attention of the plaintiff was cited with reference to the subsequent proceedings and the documents in Exs.B8 to B18.

19. Though I do see force in the contention taken by the learned counsel for the petitioner that P.W.1 should be recalled for the

purpose of putting questions with reference to Exs.B8 to B18, I am not in a position to agree with the contention that the other witnesses are also to be recalled for the purpose of further cross examination.

20. The suit in question was filed by the respondent in his capacity as plaintiff. It is for the plaintiff to prove as to whether he has been ready and willing to perform his part of the contract. The learned Trial Judge proceeded on the basis that the permission was granted by this Court only to lead evidence and that would not cover the application filed to recall P.W.1 to P.W.3 for further cross examination. I am not in a position to agree with the views expressed by the learned Trial Judge. When this Court granted liberty to the parties to produce evidence, it would also cover the request for recalling witnesses for further cross examination. The learned Trial Judge was not correct in dismissing the application in I.A.No.354 of 2013. I am therefore of the view that the order deserves to be set aside.

21. In the result, the order dated 24.10.2014 is set aside. The application in I.A.No.354 of 2013 is allowed in part.

22. The petitioner is permitted to recall P.W.1 for further cross examination. The cross examination should be limited to the exhibits marked in Exs.B8 to B18.

23. The suit is of the year 2004. The learned Principal Sub Judge, Puducherry is directed to dispose of the suit, as expeditiously as possible, and in any case, on or before 31 March 2017.

24. The Civil Revision Petition is allowed as indicated above.
No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2016

TK

To

The Principal Sub Judge
Puducherry.

K.K.SASIDHARAN, J.

TK

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