

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1386 of 2016

&

CMP No.7699/2016

1.Elumalai
2.E.Senthil Kumar
3.E.Sreedhar

... Petitioners

vs.

1.A.G.L.Irudhayaraj
2.P.M.R.Sarkar
3.G.Rustham Singh
4.G.Vasantha Bai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 20.04.2016 made in I.A.No.5525 of 2016 in O.S.No.12065 of 2010 on the file of the VI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thiagarajan
For Respondent : Mr.P.S.Raman
Senior Counsel
for Mr.Rajnish Pathiyil

ORDER

The plaintiffs in the original suit O.S.No.12065 of 2010 pending on the file of VI Additional Judge, City Civil Court, Chennai are the petitioners in the Civil Revision Petition. The defendants therein are the respondents. The third defendant in the original suit is the first respondent in the Civil Revision Petition.

2. The case is in part-heard stage. In fact, the above said suit was originally filed on the Original Side of the Madras High Court as C.S.No.597 of 2006. The Hon'ble Supreme Court by an order dated 19.03.2007 directed the High Court to make an effort to dispose of the same within a period of 6 months from the date of receipt of the said order of the Supreme Court. The Hon'ble Supreme Court further directed that the parties should not create any third party right till the completion of the suit.

3. Thereafter, consequent to the enhancement of the pecuniary jurisdiction of the City Civil Court, the civil suits stood transferred to the City Civil Court and made over to VI Additional Judge, City Civil Court, Chennai after being renumbered as O.S.No.12065 of 2010. Thereafter, the plaintiffs filed a Transfer Application Tr.A.No.2468 of 2012 not in O.S.No.12065 of 2010, but in the non-existing C.S.No.597

of 2006, to withdraw and transfer O.S.No.12065 of 2010 to the file of the High Court. A learned single Judge of this Court by order dated 30.10.2012 dismissed the said transfer application and directed the VI Additional Judge, City Civil Court, Chennai to take note of the order passed by the Supreme Court and pass appropriate orders.

4. After the completion of examination of witnesses on the side of the plaintiffs, the defendants' side evidence commenced. The third defendant, who is the first respondent herein, figured as the first witness (DW1). His proof affidavit referred to several documents to be marked as exhibits on his side, xerox copies of which had been filed along with the written statement. As an objection was raised on behalf of the plaintiffs for marking those xerox copies, the third defendant filed a memo producing the originals of some of those xerox copies. Thereafter, the third defendant filed an application for reception of additional documents. The said application was allowed. When the documents relied by the third defendant was sought to be marked, an objection was raised stating that they should not be marked as they were xerox copies. Meanwhile, the third defendant filed another memo producing the available original documents to be substituted for the xerox copies. Then, the proof affidavit was taken on file and the

documents were marked as exhibits on the side of the third defendant.

5. At the time of marking some of those documents, objections were raised on the ground that xerox copies could not be marked. But the trial Court wanted to mark them subject to objection, sustainability of which could be decided at a later point of time. It seems, at that juncture, the learned counsel for the plaintiffs informed the Court below that he wanted to approach the High Court with a revision and walked out of the proceedings, pursuant to which the learned trial Judge chose to mark the originals without any observation and the xerox copies with the observation that they were marked subject to proof and relevancy, implying that the decision regarding their admissibility would be taken at a later point of time. Aggrieved by the said procedure adopted by the learned trial Judge and the order passed in the memo filed by the third defendant in I.A.No.5525 of 2016, the plaintiffs have come forward with the present revision.

6. The other respondents are not going to be affected by an order that may be passed in the revision. The only contesting respondent is the third defendant. The third defendant has appeared through a counsel Mr.Rajnish Pathiyil and he is represented by

Mr.P.S.Raman,learned senior counsel.

7. The submissions made by Mr.Mr.R.Thiagarajan, learned counsel for the revision petitioners and by Mr.P.S.Raman, learned senior counsel appearing for Mr.Rajnish Pathiyil, the learned counsel on record for the first respondent are heard.

8. This Court is able to visualize a situation in which hurdles are provided for the progress of the case either by the plaintiff or by the defendants on technicalities. We need not dwell on technicalities while deciding the revision under Article 227 of the Constitution of India. How to make the case move on shall be the endeavour of the Court in dealing with the revision. The main objection raised by the plaintiff is that there are a number of xerox copies marked as exhibits on the side of the third defendant, despite the objection raised by the counsel for the plaintiffs, of course with a rider that the admissibility of the same shall be decided at a later point of time. In support of his contention that such a procedure is not proper, Mr.R.Thiagarajan, learned counsel for the revision petitioners/plaintiffs relied on the judgment of the Hon'ble Supreme Court in ***Shalimar Chemical Works Ltd., Vs. Surendra Oil and Dal Mills (Refineries) and Ors.*** reported in

(2010) 8 SCC 423. The Hon'ble Supreme Court deprecated the practice of marking such photocopies, in stead of originals which was objected by the opposite party, "Subject to objection regarding proof and admissibility".

9. However, the learned senior counsel appearing for the first respondent / third defendant would contend that many of the documents, which were xerox copies, produced by the plaintiffs were marked subject to admissibility as marking of those documents was objected by the defendants and that it is surprising that the plaintiff, who availed such a benefit, are now finding fault with the similar procedure adopted in case of documents produced by the third defendant.

10. Be that as it may, the fact remains that no challenge has been made to the marking of the documents, which are xerox copies as exhibits on the side of the plaintiffs subject to admissibility, proof and relevancy. Hence, we need not open that Pandora's box at this moment. The present challenge is against the marking of the xerox copies produced on the side of the third defendant subject to admissibility, proof and relevancy. This Court has to confine its

consideration to the said aspect alone.

11. In this regard, Mr.P.S.Raman, learned senior counsel appearing for the contesting respondent/third defendant would fairly submit that the contesting respondent / third defendant will concede for the removal of markings of the xerox copies produced as additional documents. However, the learned senior counsel would contend that the xerox copies which were produced along with the written statement and marked need not be interfered with.

12. This Court finds a gray area in such a contention. The same will provide a breeding point for prolongation of the litigation. Hence, in the interest of justice to see that litigation is brought to an end without unnecessary delay, this Court deems it appropriate to direct the trial Court to remove the markings of the documents on the side of the first respondent/third defendant through DW1 and re-do the marking of the documents, in which event, the originals, certified copies and carbon copies, originals of which are not available with the third defendant, shall be marked directly and marking of the xerox copies shall be relegated after hearing the objections to be raised by the plaintiffs/revisions petitioners. This direction is issued keeping in

mind that the removal of the marking of the xerox copies alone will cause some vacuum in the list of exhibits and in order to avoid any discrepancy or difficulty in identifying the documents.

With the above said direction, the Civil Revision Petition shall stand disposed of. The trial Judge is directed to proceed with the trial without granting unnecessary adjournments and the parties shall also cooperate with the Court for such disposal. It is also made clear that the right of the contesting defendants to advance their arguments regarding the objectionable documents marked on the side of the plaintiffs subject to proof, relevancy and admissibility shall be kept intact and it shall be exercised at the time of arguing the case. No costs.

28.04.2016

Index: Yes/No
Internet: yes/No
gpa

To

VI Additional Judge
City Civil Court, Chennai

P.R.SHIVAKUMAR.J.,

gpa

C.R.P (PD) No.1386 of 2016 &
CMP No.7699/2016

28.04.2016