

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1809 of 2016

&

C.M.P.No.9427 of 2016

1.Christian Meier

2.M/s.Edith Meier's Exim Private Limited

rep by its Managing Director

Mr.Hirdyanandan Thivari

S/o Madhav Prasad Thivari

B-206, Raheja Enclave

Race Course Road

Coimbatore

... Petitioners

vs

1.Mrs.Sunitha Bhatia

rep by her duly constituted

General Power of Attorney Agent

Mr.K.Vijayan

2.Mrs.Nilafar Neesha Ahamed Abdul Wajid

w.o Ahamed Abdul Wajid

rep by her Power of Attorney Agent

Mr.A.B.Nazeer Ahamed

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order of the learned District Munsif, Uthagamandalam passed in I.A.No.702 of 2014 in O.S.No.94 of 2011 on 15.03.2016.

For Petitioners : Mr.M.Aravind Subramaniam

ORDER

This revision challenges the order passed by the learned District Munsif Judge, Uthagamandalam passed in I.A.No.702 of 2014 in O.S.No.94 of 2011 on 15.03.2016.

2. By way of the interim application, the petitioner/defendants sought to file additional written statement. In dismissing such application, Court below reasoned has follows:

16. On considering above all aspects it seems that the defendants has not stated the above averments of additional written statement while filing the detailed written statement. The defendants trying to fill up the lacuna in the defence taken up by them. Moreover the plea taken in additional written statement is mutually destructive in the earlier pleas. Therefore considering the foregoing discussion this Court viewed that this petition devoids merits. Consequently this petition is liable to be dismissed with costs. In the result, this petition is dismissed with cost. “

Learned counsel for petitioner submits that Court below besides passing an erroneous order has made observations that the petitioner in moving the said application was trying to fill up the lacuna in the case and has further observed that the petitioner was taking a plea destructive of the plea earlier taken. It is the case of the respondent/plaintiff that she has not executed

power of attorney in favour of the petitioner/defendant. It is the contention of the respondent that she was not in India on the date that she allegedly executed such document. The core issue in the case is as to the validity of the power of attorney dated 04.08.2003.

3. Through the additional written statement the petitioner has sought to inform the existence of certain documents which were intended to be used in the course of cross examination of P.W.1.

4. This Court has perused the order under challenge and does not find reason to interfere particularly in the light of Or.VIII R.9 C.P.C. This Court does not find reason to subscribe to the view of the Court below that the petitioner was seeking to fill up the lacuna in his case or was taking a plea destructive of his earlier plea. This court would also observe that towards avoiding unnecessary protraction of proceedings, the Court below would permit the petitioner to mark documents sought to be used for the purpose of contradiction of plaintiff's witness and may do so subject to their admissibility, relevance and proof, which questions may be decided at the time of final disposal of the suit.

C.T.SELVAM, J

kpr

5. Accordingly, the Civil Revision petition is dismissed with the above observation. No costs. Connected miscellaneous petition is closed.

20.06.2016.

Index:yes/no

Internet:yes

To

The District Munsif, Uthagamandalam

Civil Revision Petition (PD) No.1809 of 2016