

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2016

Delivered on: 21.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.1881 of 2013 &
M.P.No.1 of 2013

S.Swamiappan Petitioner

vs

1. S.P.Palaniswamy
2. Bhakthavathalam Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the II Additional District Munsif, Erode, dated 4.2.2013 in I.A.No.483 of 2012 in O.S.No.154 of 2009.

For petitioner : Mr.V.Raghavachari
For respondents : Mr.N.Manokaran for R1
No appearance for R2

ORDER

This Civil Revision Petition is directed against the order passed by the learned II Additional District Munsif, Erode, dated 4.2.2013 in I.A.No.483 of 2012 in O.S.No.154 of 2009 in and by which, the application filed under Order 8 Rule 9 CPC by the petitioner, seeking

leave to file reply statement in the suit, has been dismissed.

2. Petitioner is the plaintiff in the suit in O.S.No.154 of 2009 filed before the Court below, for declaration and permanent injunction. It appears that the respondents/defendants filed their written statement in the said suit. The petitioner moved an interlocutory application in I.A.No.483 of 2012 under Order 8 Rule 9 CPC, seeking leave to file a reply statement, which came to be dismissed by the Court below. Hence, the present petition.

3. According to the petitioner, reply statement is necessitated in view of specific averments contained in the written statement filed on behalf of the respondents/defendants and the same required certain elaboration and clarification by way of reply statement for effective adjudication of the *lis*.

4. Heard the learned counsel appearing for both sides and perused the entire materials available on record.

5. Before the trial Court, a counter statement has been filed on behalf of the respondents/defendants resisting the interlocutory application filed by the petitioner/plaintiff on the ground that the sole

aim of the petitioner herein was to drag on the proceedings and escape from conducting the trial of the suit. According to the respondents, the suit was ripe for trial as early as on 6.11.2009 and the same was posted on the ready list on 4.2.2010, but the suit was dismissed for default for non-appearance of the petitioner/plaintiff on 28.3.2012. However, the suit was restored subsequently and posted for hearing on 6.11.2012. In the circumstances, the respondents/defendants prayed for dismissal of the interlocutory application.

6. The learned trial Judge, after taking into consideration of the submissions made by either side, dismissed the interlocutory application on the ground that the reply statement filed by the petitioner/plaintiff is against rules of pleadings and practice. It is to be noted that while recording such findings against the petitioner/plaintiff, the learned trial Judge, however, accepted the legal position settled in the decisions which cited by the petitioner during the course of hearing of the interlocutory application. When the legal position has been accepted by the learned trial Judge that right to file reply statement cannot be denied to the parties unless the same is shown to be vexatious and unnecessary, he ought not to have dismissed the application. As far as the case on hand is concerned,

the petitioner/plaintiff explained that the reply statement became necessary in view of certain specific allegations contained in para 4 and other paragraphs of the written statement, which required elaboration and clarification for proper adjudication of the disputes between the parties.

7. In view of the above submissions made on behalf of the petitioner/plaintiff, this Court is of the view that the order passed by the learned trial Judge is contrary to law, particularly, in view of the fact that no prejudice would be caused to the other side.

8. Accordingly, the Civil Revision Petition is allowed and the order dated 04.02.2013 made in I.A.No.483 of 2012 in O.S.No.154 of 2009 is set aside. Considering the fact that the suit was of the year 2009 and the matter was already listed in ready list on 4.2.2010, the trial Court is directed to expedite the trial and dispose of the suit, within a period of six months from today.

Suk

21-10-2016

To

II Additional District Munsif, Erode.

V. PARTHIBAN,J.,

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Pre delivery order in
CRP(PD)No.1881 of 2013

21-10-2016