

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.1935 of 2013
and
M.P.No.1 of 2013**

1.Komarasamy
2.Ramayee
3.Gunasundari
4.Velusamy

.. Petitioners/Defendants

Vs.

P.Subramanian

.. Respondent/Plaintiff

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.330 of 2013 in O.S.No.293 of 2008 dated 03.04.2013 on the file of the Sub Court, Tiruchengode.

For Petitioners : Mr.M.Guruprasad

For Respondent : Mr.N.Manokaran

ORDER

The Petitioners/Defendants have preferred the instant Civil Revision Petition before this Court as against the order dated 03.04.2013 in I.A.No.330 of 2013 in O.S.No.293 of 2008 passed by

the Learned Sub Judge, Tiruchengode.

2.The Learned Sub Judge, Tiruchengode, while passing the impugned order in I.A.No.330 of 2013 in O.S.No.293 of 2008 on 03.04.2013 inter-alia at paragraphs 5 to 7 had observed the following:

"5.It is significant to note that in this case this petitioners only preferred the revision in CRP.NPD.4397/2012 in which the Hon'ble High Court directed this Court to dispose the suit within a period of three months from the date of receipt of the order and accordingly, the above suit is posted for trial and the plaintiff also examined in chief and case is posted for cross examination of P.W.1. Under such circumstances when the case is partly heard, this Court feels that the proposed written statement cannot be received as it entirely differs from the original written statement and introduced a new defence. If the proposed additional written statement is received, the plaintiffs should necessarily be allowed to file a reply statement and further issues have to be framed. Therefore, it is nothing but a second round of battle and it will consume more time to

dispose the case.

6. There is absolutely no valid reason stated by this petitioners as to why they have not taken the proposed defence in their original written statement itself. They simply stated in the affidavit as if their previous counsel has omitted to mention the defence stated in the additional written statement. But on perusal of the case records, this petitioners have changed their counsel many times and therefore, if really this petitioners would have instructed their counsel in a proper manner, definitely the previous counsel would have mentioned all the defence in the original written statement itself. Since because, as an after thought, the proposed defence taken by the defendants, they have come forward with this petition belatedly with a view to prolong the matter in such a case the direction of the Hon'ble High Court may not be complied by this Court.

7. Therefore, this Court feels that if the proposed additional written statement is received, definitely, the plaintiff will be put to irreparable loss and hardship and it will give route for consuming more time to dispose the case. Therefore, there is absolutely no merits in this petition and the same is liable to be

dismissed with cost."

and resultantly, dismissed the petition with costs.

3.Challenging the correctness, validity and legality of the order dated 03.04.2013 in I.A.No.330 of 2013 in O.S.No.293 of 2008 passed by the trial Court, the Revision Petitioners/Defendants 1 to 4 have filed the present Civil Revision Petition before this Court, basically contending that the trial Court had dismissed the I.A.No.330 of 2013 without properly advertng to the facts and circumstances of the present case.

4.The Learned counsel for the Petitioners urges before this Court that the Revision Petitioners had filed the additional written statement before the trial Court to the effect that the First Petitioner/First Defendant had borrowed a sum of Rs.25,000/- from the Respondent/Plaintiff on 01.06.2005 and at that time, the Respondent/Plaintiff had obtained signature in blank stamp papers and now due to boundary dispute with the help of those stamp papers, the Respondent/Plaintiff had created fictitious agreement and filed the present suit against them.

5.Lastly, it is the stand of the Revision Petitioners that the ingredients of Or.8 R.9 of the Civil Procedure Code should be liberally construed and there is no impediment for the Defendants in Law to make an inconsistent or new plea.

6.Per contra, it is the stand of the Learned counsel for the Respondent/Plaintiff that to nullify the order passed by this Court in CRP.No.4397 of 2012 dated 07.02.2013, whereby and whereunder, this Court had directed the trial Court to dispose of the main suit within a period of three months from the date of receipt of a copy of this order. Further, in the instant case, P.W.1 was examined in Chief (through proof affidavit and the matter was posted for cross-examination of P.W.1) only at that point of time, the Revision Petitioners/Defendants have filed I.A.No.330 of 2013 on the file of the trial Court seeking permission to file additional written statement (under Or.8 R.9 of the Civil Procedure Code) by way of subsequent pleadings and also they have taken inconsistent plea in the additional written statement than the one taken by them in the original written statement.

7.The Learned counsel for the Respondent/Plaintiff brings to

the notice of this Court that the suit in O.S.No.10 of 2006 was originally instituted on the file of the Learned Sub Judge, Namakkal on 26.12.2005 and later, the said suit was transferred to the file of the Learned Sub Judge, Tiruchengode on 29.03.2008 and originally, an 'Ex-parte Decree' was passed in the main suit as early as on 01.12.2010 and that the Revision Petitioners/Defendants before the trial Court filed necessary petition to set aside the 'Ex-parte Decree' and the same was dismissed by the trial Court against which they filed Civil Revision Petition No.4397 of 2012 which was allowed by this Court on 07.02.2013.

8.As far as the present case is concerned, it comes to be known that this Court while allowing the CRP.No.4397 of 2012 on 07.02.2013 at paragraph 8 had observed the following:

"8.As the suit has been instituted in the year 2006 and pleadings are already over, the learned Subordinate Judge, Tiruchengode, is directed to dispose of the suit, within a period of three months, after affording opportunities to both the parties."

Also that the Revision Petitioners/Defendants had filed I.A.No.330 of 2013 on 01.04.2013 (filed under Or.8 R.9 of the Civil Procedure

Code) and the same was dismissed by the trial Court on 03.04.2013 and as against the same, the present Civil Revision Petition is filed.

9. According to the Respondent/Plaintiff, the cause of action arose on 01.06.2005 when the suit sale agreement was entered into between the Respondent/Plaintiff and the Revision Petitioners/Defendants. The very execution of the sale agreement dated 01.06.2005 was originally denied as a forged one and in the additional written statement filed by the Revision Petitioners/Defendants, a different plea is taken to the effect that the suit property situates adjacent to the properties belonging to the plaintiff. Since the defendants were in need of money to meet out their urgent expenses, they borrowed a sum of Rs.25,000/- from the plaintiff on 01.06.2005 and agreed to repay the same with interest at the rate of 24% per annum. At the time of availing the loan, the plaintiff demanded the defendants to sign on certain empty signed stamp papers, concord sheets and white sheets. As the plaintiff is the relative of the defendants, they trusted him and signed those blank stamp and other papers as demanded by him. The plaintiff promised the defendants that he would return those blank signed papers after discharge of the aforesaid loan. The

defendants had discharged the said loan during the month of September 2005 and requested the plaintiff to return those blank signed stamp papers and other papers. But the plaintiff intimated the defendants that he lost those blank signed stamp papers somewhere and he would surrender the same as soon as he found the same. Since the plaintiff is their relative, the defendants believed him and did not persuade him further etc.

10. It is to be noted that in regard to the filing of the additional written statement by a litigant is concerned, the ingredients of Or.8 R.9 of the Civil Procedure Code confer enough power on a Court of Law to grant leave to a litigant to file additional written statement. No wonder, Or.8 R.9 of the Civil Procedure Code does not prescribe by restricting what defence one can take in a given case. But that does not mean, a party/litigant is entitled to file an additional written statement belatedly or at a time when he desires to file the same in a pending suit between the parties. If a party/litigant seeks permission of the trial Court to file belatedly the additional written statement in a given case and that too, in a pending suit, then the Court can mulct him with costs to be paid to the other side with a view to secure the ends of justice. As a matter of fact, discretion of

a Court under Or.8 R.9 of the Civil Procedure Code in the absence of any prejudice, to prevent plurality of litigation and to secure the ends of justice can be liberally exercised. As a contingency, filing of re-joinder may be permitted to be filed by a Court of Law.

11. In this connection, this Court very aptly points out that it is open to the Plaintiff/Defendant in a suit to bring to the notice of the Court any subsequent event by means of filing of necessary application or by way of additional written statement (additional pleadings as the case may be). Ordinarily, a Plaintiff in a given suit or proceedings may not be permitted in Civil Law to take an inconsistent and contradictory pleas. But insofar as the Defendant is concerned, he is entitled to take an inconsistent defence/stand and also to substantiate the subsequent events, he may seek permission to file an additional written statement. It is the duty of the Court to consider only whether the additional pleading is necessary to determine the real controversy between the parties without causing injustice to other side. While considering the additional pleadings, a Court of Law is not to traverse upon the merits of the case/matter, as opined by this Court.

12.As far as the present case is concerned, the suit was originally filed in the year 2006 (plaint filed on 26.12.2005 before the Learned Sub Judge, Namakkal and later, the said suit was renumbered as O.S.No.293 of 2008 on the file of the Learned Sub Judge, Tiruchengode). For the second time, as on date, the Revision Petitioners/Defendants were set ex-parte in the main suit in O.S.No.293 of 2008 on 13.06.2013 and later, an application was filed under Or.9 R.7 of the Civil Procedure Code on behalf of the Revision Petitioners/Defendants and the same is slated for an enquiry on 08.02.2016 on the file of the trial Court.

13.Be that as it may, in the present suit in O.S.No.293 of 2008 on the file of the trial Court, originally, the written statement was filed by the Revision Petitioners/Defendants on 04.07.2006 (when the suit was numbered as O.S.No.10 of 2006) later, an additional written statement was filed on 01.04.2013. This additional written statement was only sought to be filed with the permission of the Court. The Revision Petitioners/Defendants filed the necessary application in I.A.No.330 of 2013 on the file of the trial Court, which only came to be dismissed by the trial Court on 03.04.2013. At this stage, this Court on going through the

impugned order of the trial Court in I.A.No.330 of 2013 in O.S.No.293 of 2008 is of the considered view that the trial Court had resultantly opined if an additional written statement was received, the plaintiff would be put to irreparable loss and hardships and also it would give route for consuming some more time to dispose of the case etc.

14.It cannot be brushed aside that although this Court in CRP (NPD) No.4397 of 2012 on 07.02.2013 had directed the trial Court to dispose of the suit in O.S.No.293 of 2008 within a period of three months from the date of receipt of a copy of this order, it is brought to the notice of this Court, that although three years have gone by, yet as on date, the petition under Or.9 R.7 filed by the Revision Petitioners/Defendants to set aside the 'Ex-parte Decree' dated 13.06.2013 is pending and is coming up for an enquiry on 08.02.2016.

15.In the light of the detailed discussions as stated supra and also, this Court on taking note of the entire conspectus of the attendant facts and circumstances of the present case in an encircling fashion comes to an irresistible and inescapable

conclusion that the trial Court ought to have allowed the I.A.No.330 of 2013 seeking permission to file subsequent pleadings and sets aside the same in the interest of justice. Consequently, the Civil Revision Petition succeeds.

16.In the result, the Civil Revision Petition is allowed. The order of the trial Court dated 03.04.2013 in I.A.No.330 of 2013 in O.S.No.293 of 2008 is hereby set aside for the reasons assigned in this Civil Revision Petition. However, this Court considering the facts and circumstances of the case, directs the Revision Petitioners/Defendants to pay a costs of Rs.2000/- (Rupees Two Thousand Only) to the Learned counsel for the Respondent/Plaintiff (in Civil Revision Petition) directly/in person within a period of one week from the date of receipt of a copy of this order. It is made clear that the costs of Rs.2000/- awarded to the Respondent/Plaintiff, as the Revision Petitioners/Defendants had filed the I.A.No.330 of 2013 belatedly (after filing of the original written statement). Consequently, connected Miscellaneous Petition is also closed. No costs.

04.02.2016

Index : Yes

Internet : Yes
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M.VENUGOPAL, J.

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To

The Sub Court,
Tiruchengode.

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