

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3263 of 2016
and C.M.P.No.16572 of 2016

M.O.H.Iqbal

... Petitioner

Vs

1.M.O.H.Asiam

2.H.Najumunissa

3.Shakeela

4.Faisal

... Respondents

Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 23.09.2016 made in I.A.No.242 of 2016 in I.A.No.737 of 2001 in O.S.No.207 of 1978 on the file of the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.G.R.Swaminathan
for Mr.R.Thiagarajan

For Respondents : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran

ORDER

Challenging the fair and final order passed in I.A.No.242 of 2016 in I.A.No.737 of 2001 in O.S.No.207 of 1978 on the file of the Principal Subordinate Judge, Puducherry, the 1st defendant has filed the above Civil

Revision Petition.

2.The plaintiff filed the suit in O.S.No.207 of 1978 to pass a preliminary decree for dissolution of the Firm and for other reliefs.

3.The trial Court passed a preliminary decree on 26.04.1999. Pursuant to the preliminary decree passed in the suit, the plaintiff filed a final decree application in I.A.No.737 of 2001. In the final decree application, the defendants took out an application in I.A.No.242 of 2016 under Order 8 Rule 1-A (3) of the Civil Procedure Code to condone the delay in filing the additional documents. The defendants sought to mark nine documents in the final decree proceedings.

4.In the affidavit filed in support of the petition, the defendants have explained the reasons for the delay in producing the documents before the trial Court. The plaintiff filed his counter and contested the application. The trial Court, taking into consideration the case of both parties, dismissed the application finding that the defendants should mark the documents only through their witnesses and not in the cross examination of P.W.1.

5.The trial Court could have allowed the application and received the

documents subject to proof and relevancy of the same. Instead of giving an opportunity to the defendants to produce the documents, the trial Court had erroneously dismissed the application finding that the documents can be marked only through the defendants' side witnesses and not through P.W.1. It is not the case of the defendants that the documents should be marked only through P.W.1. They only want the additional documents to be marked on their side.

6.In these circumstances, I am of the considered view that the nine additional documents sought to be marked by the defendants can be received by the trial Court subject to proof and relevancy of the same. It is open to the defendants to mark those documents at the time of examination of R.Ws. It is needless to say that the defendants should prove the documents and its relevancy at the time of marking the documents. It is also open to the plaintiff to cross examine the witnesses with regard to the proof and relevancy of the documents.

7.In these circumstances, the fair and decreetal order passed in I.A.No.242 of 2016 are set aside and the application in I.A.No.242 of 2016 stands allowed.

8. Since the final decree application is pending from the year 2001, the Principal Subordinate Judge, Puducherry, is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order. It is made clear that the defendants should complete the cross examination of P.W.1 within a period of two weeks from the date of receipt of a copy of this order.

9. With these observations, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.10.2016

To

The Principal Subordinate Judge,
Puducherry.

M.DURAIWAMY,J.
va

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