

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

CORAM :

THE HONOURABLE Mr.JUSTICE C.T.SELVAM

C.R.P.(PD)No.2754 of 2013
and MP.1 of 2013

A.K.Venkatasamy		... Petitioner
	Vs.	
Sivanantham		... Respondent

Prayer : This petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 12.12.2012 made in IA.No.117 of 2007 in OS.No.117 of 2007 on the file of the II Additional Subordinate Judge, Villupuram.

For Petitioner : Mr.R.Balakrishnan.

For Respondent : Mr.Sathish Parasaran.

ORDER

This revision arises against the order of learned II Additional Subordinate Judge, Villupuram passed in IA.No.712 of 2012 in OS.No.117 of 2007 on 12.12.2012.

2.The suit in OS.No.117 of 2007 has been filed by the respondent/plaintiff seeking to set aside the lease deed dated 21.11.1993 executed by the plaintiff's father in favour of the second

defendant/temple. IA.No.712 of 2012 is filed by the petitioner/first defendant in the suit to condone the delay in filing the documents and to mark the same on the side of the petitioner/defendant therein. The trial Court while dismissing the petition has reasoned that no proper explanation has been offered by the petitioner for not producing the documents which admittedly was in his possession, even as on date of filing written statement, along there with.

3.The learned counsel for the petitioner submitted that the petitioner had sought to mark the document through PW1/plaintiff in the course of cross examination and that PW1 denied the execution thereof and hence the same could not be marked at such stage. Hence, the petitioner moved IA.No.712 of 2012 before the trial Court.

4.Learned counsel for petitioner relied on the decision of this Court in **A.V.Vedarasu and another V. M.Shahul Hameed and another (2003-2-LW-552)**, wherein it has been observed as follows:-

7.Sub-rule 3 of the Rule 1-A of Order 8 makes it clear that any such document can be received in evidence on behalf of the defendant at the hearing of the suit with the leave of the Court.

8. When such substantial power is provided to the trial Court in the case of the defendant, who failed to produce the documents within the prescribed time limit, it cannot be held that the order of the Court below in having condoned the delay in filing the documents by the respondent/defendants at the time of trial is not in accordance with the provisions of the Code.

5. Learned counsel for respondent put forth a proposition which this Court is unable to accept. He submitted that any documents in the possession of the defendant at the time of filing the written statement necessarily have to be filed therewith. He contended that when the defendant fails to do so, the Court could not permit him to do so subsequently.

6. In dismissing I.A.No.712 of 2012 in O.S.No.117 of 2007, the Court below has lost sight of Or.8 R.1(A)(4) which informs that nothing in R.(1) shall apply to documents:

(a) produced for the cross-examination of the plaintiff's witnesses.

7. In circumstances where document has been put to the plaintiff's witnesses and he has denied the same, it has become

necessary for the defendant to move I.A.712 of 2012 in O.S.No.117 of 2007. Hence, the Court below ought to have allowed the same.

8. In the result, the civil revision petition is allowed. The order of learned II Additional Subordinate Judge, Villupuram passed in IA.No.712 of 2012 in OS.No.117 of 2007 on 12.12.2012 is set aside. I.A.No.712 of 2012 in O.S.No.117 of 2007 shall stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2016.

Index : Yes/No
Internet : Yes/No
tsh

To
The II Additional Subordinate Judge, Villupuram.

Note : Issue copy on 17.06.2016

C.T.SELVAM, J.
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