

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4037 of 2012
and M.P.No.1 of 2012

M.Periyasamy

.. Petitioner/Defendant

Vs.

M/S.Colour Stars Dyes Trading
Company (P) Ltd.
Rep. by its Director
S.K.Siddhuraj
G.M.Complex
19, Agilmedu 6th street
Sait colony, Erode-1.

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.09.2012 made in I.A.No.280 of 2012 in O.S.No.218 of 2004 on the file of the II Additional Sub-Court, Erode.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.I.C.Vasudevan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 03.09.2012 made in I.A.No.280 of 2012 in O.S.No.218 of 2004 on the file of the II Additional Sub-Court, Erode.

2.The respondent as a plaintiff filed a suit in O.S.No.218 of 2004 for recovery of money due on business transaction. The revision petitioner/defendant has filed a written statement and contested the same. When the plaintiff's side evidence was over and the matter was posted for defendant's side evidence, the revision petitioner/defendant has filed I.A.No.280 of 2012 under Order 18 Rule 3A and Section 151 of C.P.C. for examine the son of the defendant as a first witness before the father/defendant will be examined as a witness on the side of the defendant, by stating that he is suffering from diabetics and heart disease. Further, the revision petitioner/defendant has stated that from the year 1994 onwards, his son has been looking after his business along with him. Hence, his son, by name Balasubramaniam, is a competent person to speak about his business transaction. Therefore, the revision petitioner/defendant has sought for permission.

3.The respondent/plaintiff has filed a counter stating that only with a view to drag on the proceedings, the revision petitioner/defendant has filed the application. It is further stated that no averment has been made by the defendant in the written statement indicating that his son alone is looking after his business. Hence, he prays for dismissal of the application.

4.The trial Court, after hearing both sides, dismissed the application by holding that even though the revision petitioner/defendant stated that he is suffering from diabetics and heart disease, he has not filed any documents to prove the same. Further, it was held that the revision petitioner/defendant is the competent person to speak about the accounts of the company. On that basis, the said application was dismissed.

5.Challenging the same, learned counsel for the revision petitioner/defendant submits that the revision petitioner is shown as a proprietor of the firm and from the year 1994 onwards, his son is looking after the business along with him. He further submits that the son of the revision petitioner has taken charge of the business from 04.02.2003 and hence, he is a competent person to speak about the business transaction between the plaintiff and defendant. He further submits that if necessary, after examination of his son Balasubramaniam, the revision petitioner can let in evidence. That factum was not considered by the trial Court. Therefore, he prays for allowing the revision.

6. At this juncture, learned counsel for the respondent/plaintiff would submit that the suit was filed on 15.06.2004 and written statement was filed on 11.01.2005. So it is clear that the defendant, only with a view to drag on the proceedings, has filed the application in I.A.No.280 of 2012. He would further submit that after examination of plaintiff's side evidence only, the defendant has come forward with such application. The trial Court, in para-7 of its order, has considered all the aspects in proper perspective manner and rightly dismissed the application. Hence, he prays for dismissal.

7. Considered the rival submissions made on both sides and perused the typed set of papers.

8. The respondent/plaintiff has filed the suit for recovery of money due, on business transaction, for supply of chemicals. Admittedly, the revision petitioner/defendant is a proprietary concern viz., B.S. Tex and the respondent/plaintiff is a private limited company viz., Colourstars Dyes Trading Company (P) Limited. Admittedly, written statement has been filed, issues were framed and plaintiff's side evidence was over. At this juncture, the revision

petitioner/defendant has come forward with the application in I.A.No.280 of 2012 under Order 18 Rule 3A and Section 151 of C.P.C.

9. It is appropriate to incorporate Order 18 Rule 3A of C.P.C., which is extracted hereunder:

“3A. Party to appear before other witnesses—

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

The above said provision has been inserted even in the year 1976. The reason, assigned by the revision petitioner/defendant, in para-5 of the affidavit, is since his son/Balasubramaniam looking after his business from the year 1994 onwards along with the revision petitioner and also has taken charge of his entire business in the year 2003, he is personally aware of each and every business transaction between both the parties.

10.A perusal of para-7 of the impugned order reveals that the above said factum was not considered by the trial court. As per the Order 18 Rule 3A is concerned, the Court has power to grant a

permission to the party to examine any other witness on his behalf, before examine the party to the proceedings. As already stated that, in para-5 of the affidavit, revision petitioner/defendant has specifically stated that his son/Balasubramaniam has been looking after the business along with him and that he is personally aware of the business transaction between the plaintiff and defendant. Furthermore, it is the duty of the defendant to prove his defence.

11.Considering the aforestated facts and circumstances of the case, I am of the view that the impugned order passed by the trial Court is unsustainable and hence, it is hereby set aside. The revision petitioner/defendant is permitted to examine his son as a first witness. Further, considering the request made by the learned counsel for the respondent/plaintiff for early disposal of the suit, the trial Court is directed to dispose the suit within a period of two months from the date of receipt of a copy of this order. The revision petitioner/defendant is directed to examine the witness, as and when the trial Court directs.

12.In the result, the Civil Revision Petition is allowed by setting aside the impugned order passed in I.A.No.280 of 2012 and consequently, I.A.No.280 of 2012 is hereby allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.07.2016

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Index:Yes/No

R.MALA,J.

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To

II Additional Sub-Court, Erode.

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