

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on : 17.08.2016**

**Pronounced on : 15.12.2016**

**CORAM**

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(PD)No.801 of 2012**  
**and**  
**M.P.No.1 of 2012**

Jaishankar

.. Petitioner

Vs.

Rajamanickam

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 24.03.2011 made in I.A.No.301 of 2011 in O.S.No.35 of 2003, on the file of the District Munsif Court, Attur.

For Petitioner : Mr.T.Murugamanikkam

For Respondent : Mr.P.Jagadeesan

**ORDER**

The plaintiff is the revision petitioner herein, challenging the order in I.A.No.301 of 2011 in O.S.No.35 of 2003, dated 24.03.2011, on the file of the District Munsif Court, Attur.

2.The case of the plaintiff is that he has filed the suit in O.S.No.35 of 2003 before the learned District Munsif Court at Attur for permanent injunction. After evidences by both the parties, this petitioner/plaintiff has filed the application under Section 151 of C.P.C. in I.A.No.301 of 2011 in O.S.No.35 of 2003 for Re-open the case for further cross examination of the D.W.1 since some important questions were left out at the time of cross examination of the D.W.1. Hence, to putforth the case of the plaintiff in a clean way, he wants to re-open the case for further cross examination of the D.W.1. Therefore, he prayed the Court to allow the I.A.No.301 of 2011 by re-opening the case.

3.On receipt of the notice in the above I.A.No.301 of 2011, the respondent/defendant has filed his counter. In his counter, the respondent has denied the allegation set out by the petitioner/plaintiff.

He also states that the suit was filed in the year 2003. After examination of the either side, the suit was posted for arguments from 07.11.2009 upto 11.03.2011 i.e. for more than 15 hearings (nearly 16 months) and on the 15<sup>th</sup> hearing of the case, this petitioner/plaintiff has come forward and filed this application for re-open the case for further cross examination of the D.W.1.

4.The respondent/defendant also states that the very same counsel, who presently appearing for the petitioner/plaintiff, has cross examined the defendant/D.W.1 at length running into 7 typed pages and his examination was over on 04.02.2008. Now, the petitioner/plaintiff wants further cross examination of the D.W.1 after 3 years, but the petitioner/plaintiff has not given the relevant points and questions. The respondent/defendant also states that what are all the question and what for on what subject, if the petition is not allowed, what would be the difficulty or damage to be caused to the petitioner/plaintiff are not stated in the affidavit, but he simply stated that some important questions are left out and the same may be permitted to cross examined. Hence, he stated that the petition is not maintainable and sought for the dismissal of the petition.

5. On hearing both sides, the learned District Munsif at Attur was pleased to dismiss the application on 24.03.2011, on the ground that the petitioner/plaintiff is duty bound to narrate the aspects on which further cross examination is required. The Court also stated that the plaintiff is entitled for further cross examination on specified was left out inadvertently and the application for reopen the case was filed at the arguments stage.

6. I heard Mr.T.Murugamanikkam, learned counsel appearing for the petitioner and Mr.P.Jagadeesan, learned counsel appearing for the respondent and perused the records.

7. Admittedly, the suit in O.S.No.35 of 2003 was posted for argument that too originally it was posted on 07.11.2009, but the petitioner/plaintiff has conveniently getting adjournment for more than 15 hearings i.e., prolonged the case for more than 16 months. This adjournments for more than 16 months that too only for arguments were taken by the learned counsel for the plaintiff, which act is not only committed guilty by the petitioner/plaintiff, but the Court also without properly conducting the case had simply adjourned the case

for 16 hearings i.e. from 07.11.2009 to 11.03.2011 which is about to one and half years the Court has adjourned the case without any reasonable reason. This act should not be tolerated by any one on the judicial view. When this Court pointed out that while conducting their cases, the Advocates and the parties should be vigilant in their cases, but the Courts below also should be vigilant and conduct the case in a proper manner.

8. In my judicial opinion is that not only the Advocates and litigants, but the Courts also are responsible for the delayed justice. While proceeding the cases, the Courts must be vigilant for speedy disposal of the cases. This Court and the Hon'ble Apex Court time and again directed the Courts below for speedy disposal on merits, but that has not been followed scrupulously and this is a case for example in which a Judicial Officer namely the Principal District Munsif, Attur had adjourned the case from 07.11.2009 to 11.03.2011 for more than 15 hearings i.e. for nearly 16 months that too only for arguments. This Court cannot be taken into a casual manner, but seen this with serious Judicial eyes, whereas the common man seen with tearing eyes about the way of proceedings of the case by the Judicial Officer. This Court expects that the Courts below should show their Judicial

view with Judicial conscious on the cases which they are dealing.

9.Though the petitioner/plaintiff has filed the application in I.A.No.301 of 2011 and in his affidavit without giving any proper particulars about the subject to be left out at the time of cross examination of D.W.1, but simply stated that some important questions were left out at the time of cross examination. It is settled law that if the petitioner/plaintiff had given the particulars of specified area left out inadvertently, then, the case may be reopened, but without doing so, the petitioner has filed this application, which act should not be condoned.

10.During the course of arguments, Mr.P.Jagadeesan, learned counsel appearing for the respondent had produced a judgment rendered by this Court in ***P.Kalaiarasan v. M.Lingam and others*** reported in ***2010-1-L.W. 370***. In the said judgment it is stated as follows:

“16.That apart, the plaintiff's evidence was closed in March 2006 and I.A.Nos.13591 and 13592 of 2007 were filed in August 2007 and no reasons, much less, acceptable reasons were given by the

respondents/defendants for filing the applications except saying that these applications are to be allowed in the interest of justice as they misplaced some records and some of the papers were destroyed. No reason whatsoever was given by the respondents/defendants for examining D.W.1, D.W.2 and D.W.3 before completing the cross examination of P.W.1. Further, when the suit was posted on 24.7.2007 for the arguments of the respondents/defendants, instead of arguing the matters, they successfully adjourned the matter on several occasions from 23.7.2007 to 17.8.2007 by filing a number of adjournment petitions. On 17.8.2007, there was no representation on behalf of the respondents/defendants and therefore, the suit was posted for judgment on 21.8.2007. It was only at that time the respondents/defendants suddenly realised that P.W.1 has not been effectively cross examined and this, in my opinion, is definitely for the purpose of further postponing the suit proceedings and I do not find any bonafide in those

applications.

19.The Allahabad High Court, in the above judgment, observed that “the power under Order XVIII Rule 17 of C.P.C. can be exercised even at the stage of writing a judgment by the court, but, this power should not be exercised lightly and the rule is that it should be used sparingly and in exceptional cases only.”

20.The Andhra Pradesh High Court went to the extent of observing that “no authoritative pronouncement has been brought to the notice of the court, wherein it is held that a witness could be re-called by re-opening the suit after it was adjourned for passing judgment”.

21.I am concurring with the judgment of the Allahabad High Court that under Order XVIII Rule 17 C.P.C., re-examination of witness is possible even at the stage of writing a judgment, but the power should not be exercised lightly and it should be used in exceptional cases only.”



11.This Court in the above judgment very clearly held that when the suit was posted for arguments, instead of arguing the matter, the matter was adjourned on several occasions by filing number of adjournment petition. It was only at that time, the respondent/defendant suddenly realized that DW1 has not been effectively cross examined. This is definitely for the purpose of further postponing the suit proceedings. Therefore, the above judgment is squarely applicable in the present case in hand.

12.Hence, it is made clear that the petition in I.A.No.301 of 2011 has been filed by the petitioner/plaintiff only to protract the proceedings. Apart from this, the petitioner/ plaintiff has not given the specified area left out at the time of cross examination of DW1. Having found that there is no bonafide on the part of the petitioner/plaintiff, the trial Court has rightly rejected the petition in I.A.No.301 of 2011.

13.In the present case, I do not find any exceptional circumstances warranting re-opening of the D.W.1.'s evidence and recalling D.W.1 for further cross examination. In fact, this applications

have been filed only for the purpose of protracting the suit proceedings. Normally, this court will permit such petitions, if the court finds no malafide on the part of the petitioner. But, in this case, the malafide and the oblige motive of procrastination is obvious and the court should not extend its helping hand to persons who are contesting a matter with a malafide intention of delaying and frustrating the suit proceedings. Therefore, this Court have no necessity warranting interference in the orders in I.A.No.301 of 2011 in O.S.No.35 of 2003, passed by the District Munsif Court, Attur. Accordingly, it is liable to be dismissed.

14.In the result, this Court dismissed the Civil Revision Petition by confirming the order in I.A.No.301 of 2011 in O.S.No.35 of 2003, dated 24.03.2011, on the file of the District Munsif Court, Attur.

15.Therefore, considering the facts and circumstances that the suit is of the year 2003, and the case is posted for arguments, I am inclined to pass the following orders:

(a) a direction is hereby issued to both the parties  
to file their written arguments within a week from the

date of receipt of a copy of this order;

(b) If such written arguments by both the parties are filed within the stipulated period of time, the trial Court is directed to dispose the suit on merits and in accordance with law within a period of two weeks thereafter;

(c) It is also made clear that if no written arguments are filed by either parties within the time stipulated, then the trial Court shall dispose of the suit on merits within a period of two weeks thereafter.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**15.12.2016**

vs

Index: Yes  
Internet: Yes

To

The District Munsif Court,

Attur.

**M.V.MURALIDARAN, J.**

VS

**PRE-DELIVERY ORDER MADE IN  
CRP(PD)No.801 of 2012  
and  
M.P.No.1 of 2012**

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**<http://www.judis.nic.in>**