

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1817 & 1818 of 2017
and C.M.P.No.8697 of 2017 in CRP No.1817/17

Ramakrishnan (Died)

1. Ponniammal
2. Dhanalakshmi
3. Kanagambal
4. Chennammal
5. Parthiban
6. Pargunan
7. Sivaprakasam
8. Sivakumar

.. Petitioners
in both the petitions

Vs.

State Bank of India
Uthangarai by its
Branch Manager,
Uthangarai Taluk,
Krishnagiri District.

.. Respondent
in both the petitions

PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 05.04.2017 and 20.04.2017 made in I.A.Nos.162 and 163 of 2017 in O.S.No.152 of 2014 on the file of the learned Sub Court, Uthangarai respectively.

For Petitioners : Mr.N.Manokaran

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal orders dated 05.04.2017 and 20.04.2017 made in I.A.Nos.162 and 163 of 2017 in O.S.No.152 of 2014 on the file of the learned Sub Court, Uthangarai respectively.

2. The petitioners are the defendants 2 to 9 and respondent is the plaintiff in O.S.No.152 of 2014. The respondent filed the suit for recovery of money in a sum of Rs.5,05,023.50. The petitioners filed the written statement and are contesting the suit. The trial commenced and the respondent had let in evidence and examined P.W.1 and marked 23 documents as exhibits and P.W.1 was also cross examined. Subsequently, the petitioners 5 to 8 filed application for recalling P.W.1 for cross examination, which was allowed and P.W.1 was further cross examined and the evidence was closed. The suit is posted for evidence on behalf of the petitioners. At that stage, the respondent filed two applications in IA Nos.162 and 163 of 2017 to reopen the evidence of P.W.1 and to receive the

documents. According to the respondent, to prove the case of the respondent further, witness has to be examined and further documents have to be marked. Unless further witness examined and documents are marked, the respondent would be put to irreparable loss. The petitioners filed counter affidavit on the aforesaid applications and opposed. Then submitted that Manager of the Bank is the competent person to prove the case of the Bank. Only to fill up the lacuna, the respondent has come out with the present applications.

3. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, allowed both the applications holding that the reasons adduced by the respondent are valid and petitioners will have an opportunity to cross examine the witness with regard to the documents and whether the documents are admissible or inadmissible, can be decided at the time of cross examination.

4. Against the two orders dated 05.04.2017 and 20.04.2017 made in I.A.Nos.162 and 163 of 2017 in O.S.No.152 of 2014, the present Civil Revision Petitions are filed.

5. The learned counsel for the petitioners submitted that the respondent has let in oral and documentary evidence and was cross examined by the learned counsel for the petitioner. The documents sought to be marked now are not mentioned in the plaint. Only if documents are mentioned in the plaint, the same can be admitted in evidence by invoking Order VII Rule 14 of C.P.C. The respondent is trying to fill up the lacuna while filing the additional documents by examining the Assistant Manager of the respondent Bank.

6. The learned counsel for the petitioners relied on the decision of the Supreme Court reported in **[2013 (14) SCC]** in the case of **Bagai Construction v. Gupta Building Material store and [2016 (5) CTC 555]** in the case of **Ram Rati v. Mange Ram (D) through L.Rs. And others** and submitted that the respondent cannot be permitted to file such applications to fill up the lacuna in the pleadings and evidence let in by him.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The respondent has examined the Manager of the Bank and

marked documents and he was cross examined and evidence on behalf of the respondent was closed. Subsequently, the petitioners 5 to 8 have filed application to recall the P.W.1 for further cross examination. The said application was allowed and P.W.1 was cross-examined further. At this stage, the respondent filed the present application for further examination and marking documents. The only contention of the petitioners is that the respondent is trying to fill up the lucuna by examining further witness and by marking documents.

9. The learned Judge, considering all the materials available on record, rejected the contention on the ground that the petitioners will have an opportunity to further cross examine the witness to be examined by the respondent and further documents could be marked by the respondent. The evidence on behalf of the petitioners is yet to commence and they will have an opportunity to let in evidence by examining witness and marking documents to disprove the evidence let in by the respondent. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 05.04.2017 and 20.04.2017.

V.M.VELUMANI, J.

jv

10. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2017

Index : Yes
speaking order/non speaking order
jv

To

The Sub Court,
uthangarai

C.R.P.(PD)Nos.1817 & 1818 of 2017

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