

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

CORAM

THE HONOURABLE MRS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.260 of 2014
and M.P.No.1 of 2014

R.Ganesan

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Collector of Salem District,
Collectorate Salem. Pin – 636 001.

2. The Chairman,
Salem Local Planning Authority,
Office of the Joint Director of Town
and Country Planning,
No.5/601-B, Balaji Nagar,
Subramania Nagar, First Gate,
Suramangalam, Salem. Pin – 636 005.

3. The Member Secretary,
Salem Local Planning Authority
Office of the Joint Director of Town and Country
Planning, No.5/601-B, Balaji Nagar,
Subramania Nagar, First Gate,
Suramangalam, Salem. Pin-636 005.

4. The Commissioner of Corporation of Salem,
Salem. Pin-636 001.

5. The Commissioner of Police,
Salem, Linemedu, Salem. Pin – 636 006.

6.The Tahsildar
Salem Taluk
Premises of Salem District
Central Co-operative Bank Ltd.,
Cherry road, Salem
Pin:636 001.

...Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.08.2013 in the preamble, whereas at the end of both the orders above giving/mentioning the date as 10.09.2013, whereas in the petition and orders, the date of order having been given as 10.10.2013 made in I.A.No.269 of 2013 in O.S.No.142 of 2010 on the file of the III Additional District Sessions Court, Salem.

For Petitioner : Mr.M.V.Karunakaran

For R1 to R4 : Mr.T.Jayaramaraj
Government Advocate (CS)

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 30.08.2013 made in I.A.No.269 of 2013 in O.S.No.142 of 2010 on the file of the III Additional District and Sessions Court, Salem.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.142 of 2010 on the file of the III Additional District and Sessions Court, Salem. The petitioner filed said suit for granting leave to him to file the suit as an indigent person and for claiming compensation of Rs.1 Crore with interest at 24% per annum from 11.03.2008 till the date of payment as compensation to the petitioner. The third respondent filed written statement and the same was adopted by the respondents 1, 2, 5 and 6 and are contesting the suit. The fourth respondent was set ex-parte. The petitioner filed I.A.No.269 of 2013 under Order XI Rule 21 of C.P.C., Sections 141 and 151 of C.P.C. to strike off the defence of the respondents 1 to 3, 5 & 6 made in the written statement for non compliance of the order dated 06.07.2012 made in I.A.No.240 of 2011 in O.S.No.142 of 2010.

3. According to the petitioner, in the written statement, the respondents have stated that the petitioner has not produced the documents of T.S.L.R. and F.M.B. of his land. In view of the said contention, the petitioner filed I.A.No.240 of 2011 under Order XI Rule 14 of CPC for a direction to the respondents 1 to 3, 5 & 6 for production of the documents described in the A Schedule property and for further direction to furnish the attested xerox copies of the same to

the petitioner. The respondents did not file counter affidavit and the said application was allowed on 06.07.2012. In spite of the said order, the respondents have not produced the said documents. In the circumstances, the defence of the respondents in the written statement is liable to be struck off as per Order XI Rule 21 CPC.

4. The sixth respondent filed counter affidavit and the same was adopted by the respondents 1 to 3 & 5 and submitted that the petitioner has not applied for a copy of the said documents before or after filing of the documents. The present application filed under Order XI Rule 21 CPC is not maintainable. The application under Order XI Rule 21 CPC can be maintained, only if there is an order under Order XI Rule 12 CPC for discovery of documents. If the respondents failed to produce the documents as ordered under Order XI Rule 14 CPC, adverse inference can be drawn and written statement cannot be struck off.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 30.08.2013 made in I.A.No.269 of 2013, the present Civil Revision Petition is filed by the petitioner.

7. The learned counsel for the petitioner reiterated the averments made in the affidavit and contentions raised in the grounds of revision. He further submitted that the learned Judge without considering the issue in the application has decided the issue on merits. The fourth respondent was set exparte in the suit and in spite of the same, the learned Judge permitted the fourth respondent to file vakalat and counter in the application. The learned Judge, without properly considering and appreciating the earlier order and averments made in the affidavit has erroneously dismissed the application. In support of his contention, he relied on the following decisions:

(i) AIR 1999 Mad 232 (P.A.Anbu Anandan v. D.Sivakumari);

"16. It is no doubt true that the Court cannot compel the production of letters. But however, it can pass order and if the order is disobeyed, the Court has to resort to Order 11, Rule 21 of Civil Procedure Code. For the foregoing reasons, I am of the view that the order of the learned Principal Subordinate

Judge rejecting the application I.A.No. 1179 of 1995 is unsustainable the C.R.P.No.2021 of 1996 has to be allowed."

(ii) AIR 1979 Noc 92 (Orissa) (M/S.Bishnu Ballab

Panda v. Food Corporation of India);

"The provisions of O.7 R.14 and O.11 Rr.15, 16 and other rules connected therewith are not empty formalities. They are based on whole some reasons and principles and trial Courts should not treat non-compliance of the said provisions in a light-hearted manner, more so when compliance of the same is insisted by the defendant. In a matter of this nature, after passing an order for the production of documents and after receiving the petition under Rule 21 of Order 1, the Court should insist on the production all the documents referred to and relied on by the plaintiff in the plaint, or should pass an order under Rule 21 of O.11. Hence, an order directing the defendant to file written statement when only "some documents" were filed by the plaintiff was not justified. In such a case, the Court should have exercised its power under O.11 R.21."

(iii) **AIR 2000 Madhya Pradesh 74 (Indore Development**

Authority, Indore v. Satyapal Anand and another);

"13D. Thus, it is pertinent to note that the Legislature had specific intention to deal with the topics of interrogatories, discovery, inspection together. These things have been brought to the aid of the Court or to the aid of litigants for the purpose of pinpointing the averments of adversaries. The Legislature did not want to allow the litigants to have the opportunity and leisure of burdening the record with Irrelevant averments, objections. The Legislature did not want the trials to go on dilated on account of irrelevant averments of litigants, production of irrelevant documents by the litigants and keeping back the documents from the notice of the Court and thereby polluting the stream of the administration of justice which should always be free flowing one and should be aimed totally for the purpose of finding out the truth for the purpose of adjudicating the issues in controversy between the rival parties. Therefore, it is to be noted that these provisions are not to be taken lightly. If these provisions are read together and the impact created by it is understood properly in proper spirit, one will have to come to a conclusion that the provisions are not only

important but are having a mandatory effect on the course of trials. If the Court is satisfied that a particular party is keeping back the documents which have been demanded by a party, the Court has power to punish such a party for adopting such evasive and tricky attitude for the purpose of suppressing the truth from the notice of the Court. The party cannot be permitted to have a luxury of seeking the adjournments, for avoiding the compliance with order of the Court in answering the interrogatories or discovering the documents sought by the adversary for the inspection or for the purpose of bringing it to the notice of the Court. Rule. 21 has to be given importance in this context because that is the powerful hammer which has been vested in the hands of Court for ordering the orderly behaviour of a party in the trial.

14. The party who fails to answer the interrogatories or to discover the documents for inspection, has to be punished otherwise, such party would be seeking adjournments after adjournments and would be avoiding answering the interrogatories or making the discoveries of the documents sought. Court has been provided with the power of punishing

such parry by putting it to a zero point. If it happens to be plaintiff, to make it to suffer the punishments of being forbidden to bring another suit on account of such dismissal and if it happens to be defendant, by striking out his defence and putting him to such a situation as if he had not defended the suit. That means making him to participate in the suit without pleadings and defence."

(iv) AIR 1976 SC 309 (Paradise Industrial Corporation v. Kiln Plastics Products);

"21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly."

8. The learned Government Pleader submitted that the application filed by the petitioner is not maintainable, as there is no order passed under Order XI Rule 11, 12 and 18 CPC. The learned Judge has considered these provisions and dismissed the application on valid grounds.

9. The petitioner has filed the suit as an indigent person. However, the petitioner suppressing entire facts in the Civil Revision Petition, has paid Court fee. If order is not complied with, adverse inference can be drawn against the respondents. Order XI Rule 21 CPC can be invoked only if there is an order under Order XI Rule 12 CPC for discovery of documents, without getting the same, the petitioner has filed the Civil Revision Petition.

10. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 3, 5 and 6 and perused the materials available on record.

11. The point for consideration in the present Civil Revision Petition is whether the written statement filed by the respondents 1 to 3, 5 and 6 is liable to be struck off.

12. The petitioner is seeking to strike off the defence of the respondents 1 to 3, 5 & 6 under Order XI Rule 21 CPC on the ground that the respondents have not complied with the order passed in I.A.No.240 of 2011 in O.S.No.142 of 2010, dated 06.07.2012 filed under Order XI Rule 14 CPC. The ground on which the petitioner is seeking to strike off the written statement is not maintainable and without merits. The plaint or written statement can be struck off under Order XI Rule 21 CPC, only when the plaintiff or defendant fails wilfully to comply with the order passed under Order XI Rule 11, 12 and 18 CPC.

13. **Order XI Rule 12 and Order XI Rule 14 CPC** are extracted hereunder:

Order XI Rule 12:

"12. **Application for discovery of documents** — Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such

order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs."

Order XI Rule 14 CPC:

"14. **Production of documents**—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

Order XI Rule 21 CPC:

"21. **Non-compliance with order for discovery**— (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and [an

order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."

14. In the present case, no such order has been passed under Order XI Rules 11, 12 or 18 C.P.C. The petitioner has obtained order only under Order XI Rule 14 CPC to produce the documents. The said order will not enable the petitioner to obtain the order to strike off the written statement filed by the respondents.

15. From the impugned order of the learned Judge, it is seen that the sixth respondent is searching for the documents of T.S.L.R. and F.M.B. for 50 years in respect of the petitioner's property and as and when the same is traced out, it will be produced. This shows that the respondents 1 to 3, 5 and 6 have not deliberately disobeyed the order passed under Order XI Rule 14 CPC. In the circumstance, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts and circumstances of the present case. The learned Judge has considered the provisions and dismissed the

application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 30.08.2013.

16. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 2010, the learned Judge is directed to dispose the suit as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order, without being influenced by the order passed in the present application i.e., I.A.No.269 of 2013. No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2017

Index: Yes / No

Speaking Order / Non Speaking Order

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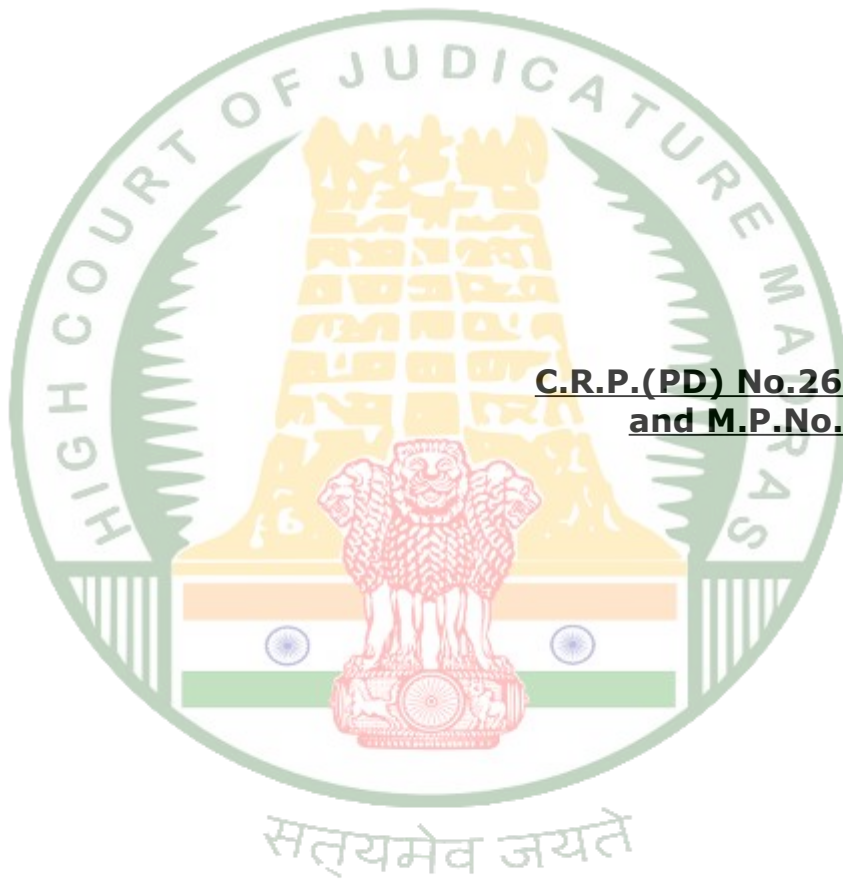
To

The III Additional District Sessions Judge, Salem.

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V.M.VELUMANI,J.

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