

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)Nos.4503 to 4505 of 2017
and **CMP.No.21272** of 2017

K.B.Rajashankar .. Petitioner in all CRP PDS

Vs

1.K.B.Mahesh Kumar
2.K.B.Shanthakumari
3.K.B.Sasiprema

.. Respondents in all CRP PDS

PRAYER in CRP.PD.Nos.4503 & 4504 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.09.2017 in I.A.Nos.3842 & 3843 of 2017 in O.S.No.11318 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

PRAYER in CRP.PD.No.4505 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 02.11.2017 in O.S.No.11318 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr. B.Ravi
(In all CRPs)

For 1st Respondent : Mr.V.Sankaranarayanan
(In all CRPs)

COMMON ORDER

CRP.PD Nos.4503 & 4504 of 2017 are filed to set aside the fair and decreetal order dated 22.09.2017 passed in I.A.Nos.3842 and 3843 of 2017 and in O.S.No.11318 of 2010 on the file of VI Additional City Civil Court, Chennai.

2. CRP.PD No.4505 of 2017 is filed to set aside the order dated 02.11.2017 passed in O.S.No.11318 of 2010 on the file of VI Additional City Civil Court, Chennai.

3. The revision petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.11318 of 2010 before the VI Additional City Civil Court, Chennai seeking declaration and permanent injunction. In the above said suit, P.W.1 was examined and Exs.A1 to A3 were marked and chief examination was also completed as early as on 27.01.2015. Subsequently, the matter was posted on 17.02.2015 and again on 10.06.2015 for cross examination of P.W.1. On all the hearings, the petitioner was present, but the defendant nor his counsel was present on the above said hearings. P.W.1's evidence was closed and posted on 17.06.2015 for further evidence. On 17.06.2015, P.W.2 was examined and the matter was posted on 24.06.2015 for cross examination of P.W.2. The defendant/respondent has not chosen to cross examine P.W.2. Thereafter, first respondent herein has filed the

applications in I.A.Nos.10760 and 10761 of 2015 to reopen and recall the evidence of P.W.1. The said applications were allowed on payment of cost of Rs.1,000/- to the petitioner herein. On 14.08.2015, P.W.1 was examined in part and the matter was posted for continuation of cross examination of P.W.1 and it has been adjourned further cross examination of P.W.1. Once again, the matter was posted on 24.02.2016. On 24.02.2016, the respondents' counsel did not appear before the court and the matter was adjourned to 11.03.2016 for continuation of cross examination of P.W.1, thereafter, on 09.09.2016, cross examination of P.W.1 was closed. At this stage, the respondent filed three applications on 26.10.2016 and the same were returned on 11.11.2016. On 28.02.2017, the matter was adjourned for arguments. In the meantime, the respondent has filed I.A.Nos.3842 and 3843 of 2017 seeking reopening and recalling the evidence of P.W.2. In the aforesaid applications, the petitioner filed counter affidavit and the memo was filed, it is stated that P.W.2 was aged about 87 years and he was completely immobilized and he has also lost control over his organs and he attends the nature calls without his knowledge. Therefore, he was not able to appear before the court for further examination. Considering the facts and circumstances of the case, the court below allowed the said applications. Challenging the said orders, the petitioner has filed the present civil revision petitions before this Court.

4. According to the learned counsel for the petitioner, the revision

petitioner himself objected the applications in I.A.Nos.3842 & 3843 of 2017 to recall and reopen the evidence of P.W.2 and the same was allowed by the Court below. The Court below without considering the memo, passed the order on 22.09.2017.

5. Per contra, the learned counsel appearing for the respondent would submit that the first respondent has filed the applications in I.A.Nos.10760 and 10761 of 2015 to reopen and recall the evidence of P.W1/petitioner herein for cross examination which was closed on 10.06.2015. The said applications were allowed and continuation of cross examination of P.W.2 was ordered. But the learned counsel for the respondent was unable to appear before the court for cross examination of P.W.1 and the same was also closed. Therefore, The Court below has rightly allowed the said application and pleaded not to interfere with the order of the Court below.

6. Heard the rival submissions made by the counsel for both sides and perused the materials available on record.

7. It is revealed from the records that the first respondent has filed the applications in I.A.Nos.3842 and 3843 of 2017 which were allowed on 22.09.2017. Subsequently, memo has been filed by the first respondent, wherein it is stated that P.W.2 is a senior citizen, aged about 87 years and was

completely immobilized and he has also lost control over his organs and therefore, he attends the nature calls without his knowledge and hence a memo was filed along with the medical certificate before the court below. Therefore, P.W.2 was not in a position to depose before the court. P.W.2 was unable to appear before the Court below, due to his ill health. Therefore, the evidence of P.W.2 was closed on 02.11.2017 in O.S.No.11318 of 2010. Without considering the said memo filed by the petitioner, the order passed by the Court below is liable to be set aside.

8. By considering the submission of both parties, this Court is inclined to pass the following order :

i) The order passed in I.A.Nos.3842 & 3843 of 2017 on the file of the VI Additional City Civil Court, Madras, is hereby set aside and the matter is remanded back to the Court below.

ii) The Court below is also directed to give an opportunity to the respondents for filing reply affidavit if any, to the aforesaid memo, within a period of one week from today.

D.KRISHNAKUMAR,J.

kkd

iii). After such opportunity, the court below is directed to pass orders on merits and in accordance with law, preferably, within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the civil revision petitions in CRP.PD.Nos.4503 & 4504 of 2017 are allowed with the above observation. The consequential docket order passed in O.S.No.11318 of 2010 on the file of the VI Additional City Civil Court, Chennai dated 02.11.2017 is also hereby set aside and the civil revision petition in CRP.PD.No.4505 of 2017 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2017

kkd

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

To

The VI Additional City Civil Court,
Chennai.

CRP (PD)Nos.4503 to 4505 of 2017
and CMP.No.21272 of 2017