

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.913 of 2017

R.Srinivasan

... Petitioner/Defendant

Vs

M/s.Southern Petrochemical Industries
Corporation Ltd. rep. by its
Secretary,
Guindy, Chennai 600 032.

... Respondent/Plaintiff

This Civil Revision Petition is filed under section 227 of the Constitution of India against the order dated 24.02.2016 made in I.A.No.15902 of 2015 in O.S.No.6143 of 1996, on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Srinivasan
Party in Person
Respondent : Mr.M.S.Murali

ORDER

The respondent herein filed a suit in O.S.No.6143 of 1996 before the XV Assistant Judge, City Civil Court, Chennai for recovery of money in default sale of mortgaged property and adjust the sale proceeds. In the

aforesaid suit, one D.S.B.Naveender who retired from service of the plaintiff company was examined as P.W.1. In spite of several opportunities given to the defendant, counsel for the defendant was not ready to cross examine P.W.1. Subsequently, defendant was not appeared before the court and hence, he was set ex parte and preliminary decree was passed. Thereafter, the plaintiff/respondent herein filed I.A.No.14175 of 2005 for passing final decree. The respondent also filed an application in I.A.No.13348 of 2005 to set aside the ex parte decree, dated 3.12.2004. The said application was dismissed. Thereafter, defendant/petitioner herein filed C.R.P.No.2794 of 2009 before this Court against I.A.No.14175 of 2005 and the same was allowed. The suit was posted for cross examination of P.W.1. At this stage, D.S.B.Naveender retired from the services of the plaintiff's company. Therefore, the respondent/plaintiff has filed the present application in I.A.No.15902 of 2015 to eschew the evidence of D.S.B.Naveendar who was examined as P.W.1 and to allow someone to let in evidence on behalf of the respondent/plaintiff. The revision petitioner has filed counter affidavit opposing the said application. By considering the submissions made by both parties, the court below allowed the application. Challenging the said order, the revision petitioner has filed the present Civil revision petition.

2 According to the learned counsel for the petitioner/defendant, the reason adduced in the affidavit to eschew the evidence of P.W.1 is unsustainable in law. Already, D.S.B. Naveender deposed before the court as P.W.1. At this stage, the respondent/plaintiff has filed the present application to fill up the lacuna in the suit. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent/plaintiff would submit that on the side of plaintiff, P.W.1 was examined. Thereafter, because of the delay on the part of the petitioner/defendant, P.W.1 was not cross examined by the petitioner/defendant. Therefore, in the interest of justice, the present officer Senior Manager (HR) may be examined in the suit. Therefore, he filed the present application to eschew the evidence of P.W.1 and the same was allowed. The learned counsel for the respondent/ plaintiff fairly submits that he is not pressing the present application filed before the court below to eschew the evidence of P.W.1. However, they will take steps to examine other witnesses in the suit under the provisions of law.

4 In view of the submission made by the counsel for the respondent/plaintiff and considering the facts and circumstances of the case, the instant application filed by the respondent/plaintiff under Section 151 of

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C.P.C. to eschew the evidence of P.W.1 is liable to be set aside. However, it is open to the respondent/plaintiff to proceed with the suit by examining other witnesses in accordance with law. Further, it is submitted by both parties that there are more than 7 I.As. are pending in the aforesaid suit. Both the parties undertake that they will cooperate with the court to dispose of the interlocutory applications pending in the aforesaid suit.

5 In view of the submission made by both parties, the Civil revision petition is allowed. No costs. The order passed by the trial court in I.A.No.15902 of 2015 in O.S.No.6143 of 1996 is set aside. No costs. Both the parties undertake that they will cooperate with the court to dispose of the I.As. pending in the aforesaid suit. The trial court shall dispose of the I.As. pending in the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

Speaking/Non Speaking order

Index: Yes/No

Internet:Yes/No

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To

The XV Assistant Judge, City Civil Court, Chennai

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