

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.560, 578 & 579 of 2015
& M.P.Nos.1 to 1 of 2015
& C.M.P.No.12077 of 2017

V.Vasanthi

.. Petitioner in all
C.R.Ps.

Vs.

N.Sivaghami

.. Respondent in all
C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 17.12.2014, made in I.A.Nos.14807, 14805, 14806 of 2014 in O.S.No.10238 of 2010, on the file of the II Additional City Civil Court, Chennai, respectively.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Mr.V.Kannan

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 17.12.2014, made in I.A.Nos.14807, 14805, 14806 of 2014 in O.S.No.10238 of 2010, on the file of the II Additional City Civil Court, Chennai, respectively.

2.In all the three Civil Revision Petitions, parties and the issues are one and the same. Therefore, disposed of by this common order.

3.The petitioner is defendant and respondent is the plaintiff in O.S.No.1038 of 2010 on the file of the II Additional City Civil Court, Chennai. The respondent filed the said suit against the petitioner for specific performance of the agreement of sale or in alternate, return of advance amount and recovery of possession. The petitioner filed written statement on 08.01.2005. Trial commenced. Both the parties have let in evidence and closed their side.

4.When the suit was posted for arguments, the respondent filed three applications viz., I.A.No.14805 of 2014 under Order XVIII Rule 17 C.P.C to reopen the evidence of P.W.1 for the purpose of marking the additional documents, I.A.No.14806 of 2014 under Order XVIII Rule 17 C.P.C to recall P.W.1 for marking the additional documents in the above suit and I.A.No.14807 of 2014 under Order VII Rule 14 (3) C.P.C to receive the documents into Court for being marked in evidence. According to the respondent, the petitioner has taken new stand that respondent did not have sufficient funds to purchase the property. Therefore, the respondent filed three applications to mark the Bank statement from I.O.B, Balance Sheet

of the respondent's husband's business, Income Tax return Saral Form No.20 for the year 2002 to 2003 and Income Tax Return Saral Form for the year 2003 to 2004 to prove her capacity.

5.The petitioner filed common counter affidavit and contended that the applications filed by the respondent are belated one and she has not given any reason for not producing the said documents earlier. Only to fill in the lacuna, the respondent has come out with the present application and prayed for dismissal of all the applications.

6.The learned Judge, by two different orders, both dated 17.12.2014 made in I.A.No.14807 of 2014 and I.A.Nos.14805 & 14806 of 2014, allowed all the three applications to give opportunity for the respondent to prove her case.

7.Against the said orders dated 17.12.2014, made in I.A.Nos.14807, 14805, 14806 of 2014 in O.S.No.10238 of 2010, the present three Civil Revision petitions are filed by the petitioner.

8.The learned counsel for the petitioner as well as the respondent reiterated the averments in the affidavit, counter affidavit, grounds of revision filed in support of the applications

respectively. In support of his contentions, the learned counsel for the petitioner relied on the order dated 20.06.2017 made in ***C.R.P(PD)(MD)Nos.1789 of 2015 to 1791 of 2015 (M.Valliappan Vs. Ramnath @ Ayothi Chettiar):***

"7.Admittedly, the documents relating to the connected suit O.S.No.24 of 2012 were in possession of the counsel in that case representing the revision petitioner. While so, it cannot be pleaded that the documents were not in the custody of the revision petitioner till filing of these petitions or he was prevented from getting access to the documents by his Advocate.

8.Admittedly, these documents were with the custody of his own counsel who had been holding the documents as the agent of the petitioner. The statute clearly bars reopening, recalling and receiving documents after commencement of trial, unless the situation warrants. In this case, there is no convincing reason why no attempt was made to produce the documents when the plaintiff's witnesses were in the box.

12.After change of various provisions by way of amendment in the C.P.C, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the code would get

defeated.....

.....During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even the aid of Section 151 C.P.C."

and reiterated the judgment reported in 2009 (II) OLR (SC) 76:
(Vadiraj Naggappa Vernekar (Dead) through Lrs Vs. Sharadchandra Prabhakar Gogate):

"25.In our view, though the provisions of Order 18 Rule 17 C.P.C have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

26.As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence

was prepared."

9.The learned counsel for the respondent in support of his contentions relied on the judgments reported in

(i) (2011) 11 SCC 275 (K.K.Velusamy Vs. N.Palanisamy):

"15.The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the Court will not entertain any interlocutory application for any kind of relief. The need for the Court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the Court, or if interests of justice require the Court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of Court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code. Be that as it may. In this case, the applications were made

before the conclusion of the arguments.

16. Neither the trial Court nor the High Court considered the question whether it was a fit case for exercise of discretion under Section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings."

(ii) AIR 2007 Bom 69 (Mohanraj Rupchand Jain Alias.... Vs. Kewalchand Hastimal Jain and others);

"8. It cannot be forgotten that the provision comprised under Order VII, Rule 14 of the Code relates to the procedure to be followed in the civil proceedings before the Court. The said provision is essentially to assist the parties as well as the court in the matter of production of the documentary evidence of the plaintiff while adjudicating the dispute raised before the Court. Being so, it is essentially to assist the parties and the Court to arrive at an appropriate decision on the matter in dispute. Being so, the provision in that regard is necessarily to be construed liberally, and no pedantic approach should be adopted while enforcing the said provision of law. The documentary evidence which is not disputed to be relevant and material for the just and appropriate decision in the matter, merely because the

respondents had failed to enter the same in the list annexed to the plaint, could not be ignored, unless it is shown by the petitioner that there would be real prejudice caused to the petitioner on account of the respondents being allowed to produce such documents. A document which pertains to the matter in issue cannot be said to cause prejudice to either of the parties, merely because there is some delay in production of such document. It is to be noted that the deponent who has filed the affidavit on behalf of the respondents along with the documents is yet to be cross examined and evidence in that regard by the petitioner is yet to be led in the matter. Being so, there would be ample opportunity to the petitioner to meet those documents in the course of recording of evidence including the cross examination of the witness of the respondents."

10. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

11. From the materials available on record, it is seen that the respondent has filed three applications to reopen the evidence of P.W.1, to recall P.W.1 for marking additional documents and to mark Bank statement from I.O.B, Balance Sheet of the respondent's husband's business, Income Tax return Saral Form relating to the years 2002-03 and 2003-04. The respondent has filed the suit in the year 2003. The petitioner has filed written statement on

08.01.2005. In the written statement itself, the petitioner has stated that respondent did not have funds to purchase the property. Despite such stand taken by the petitioner, the respondent did not produce and mark the documents and let in evidence in the suit. After closing her side and after petitioner let in evidence and closed his side in the year 2014, the respondent took number of adjournments for more than 6 months and filed the above applications. In the affidavit, the respondent has not given any reason for not filing these documents earlier even though the documents are related to the years 2003 and 2004. The learned Judge failed to consider that the respondent has not given any reason for not filing the documents along with the suit. The reason given by the learned Judge that documents sought to be marked are public documents and in the interest of justice, the respondent must be given an opportunity to put forth her case are not valid reason for allowing the applications. In the present case all the documents sought to be marked were available at the time of filing of the suit. The petitioner has not given any reason for not filing the documents earlier.

12.The order and the judgment relied on by the learned counsel for the petitioner are squarely applicable to the facts of the present case. On the other hand, the judgments relied on by the

counsel for the respondent does not advance the case of the respondent. For the above reason, the impugned orders of the learned Judge dated 17.12.2014, made in I.A.Nos.14807, 14805, 14806 of 2014 in O.S.No.10238 of 2010, are liable to be set aside and are hereby set aside.

13.The learned counsel for the respondent submitted that all the documents were marked as Exs.A6 to A9 and the suit is posted for arguments. The learned Judge is directed to eschew the evidence of the respondent after reopening and recalling. The learned Judge is also directed to return the documents marked as Exs.A6 to A9 after the suit was reopened.

14.With the above direction all the Civil Revision Petition are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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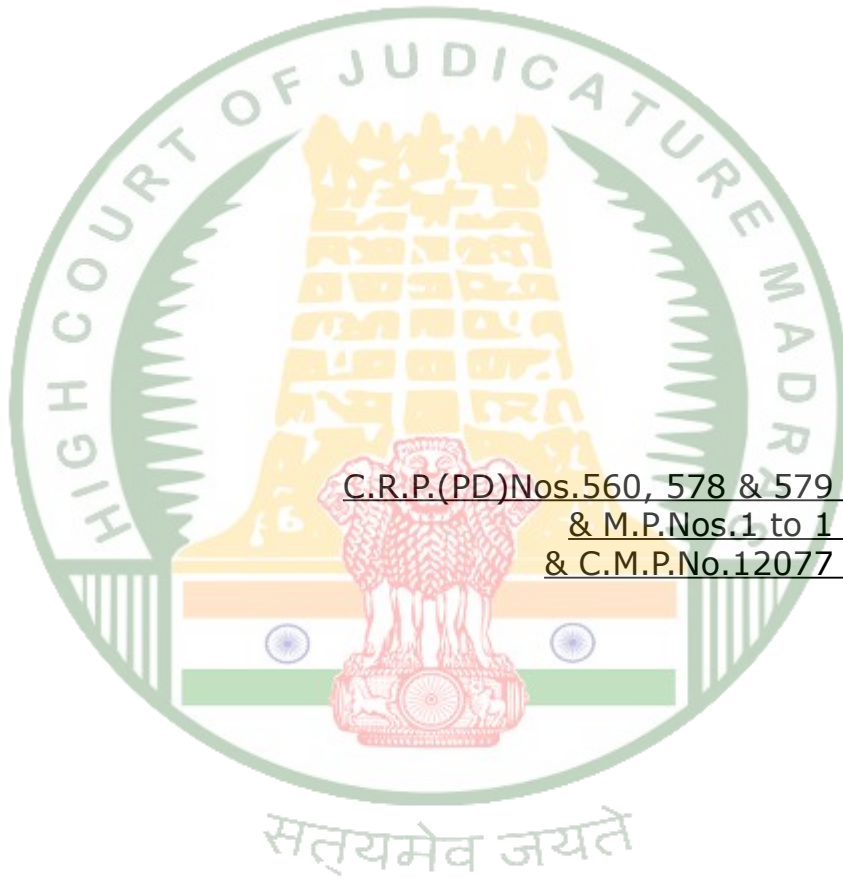
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To

The Judge,
II Additional City Civil Court,
Chennai.

V.M.VELUMANI,J.

gsa



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