

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2565 of 2016
and C.M.P.Nos.13136 of 2016 & 2146 of 2017

1. M/s Gokulam Hospital Private Ltd.,
No.3/60, Meyyanur Road
Salem 636 004
Rep by its Managing Director
Dr.Arthanari

2.The Managing Director
M/s Gokulam Hospital Private Ltd.,
No.3/60, Meyyanur Road
Salem 636 004.

... Petitioners

Vs.

Dr.B.N.Krishna Prasad

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.04.2016 in I.A.No.159 of 2016 in O.S.No.124 of 2015 on the file of III Additional District Court, Salem.

For Petitioners : Mr.T.R.Rajaraman
for Ms.P.Veena Suresh

For Respondent : M/s Rohini Ravikumar

ORDER

Challenging the fair and final order passed in I.A.No.159 of 2016 in O.S.No.124 of 2015 on the file of the III Additional District Court, Salem, the defendants 1 and 2 have filed the above said Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.124 of 2015 for recovery of money. The defendants filed their written statement and are contesting the suit. The trial Court took up the matter for trial and after the completion of the evidence of P.W.1, when the suit was posted for further examination of witnesses on the side of the plaintiff, the plaintiff took out an application in I.A.No.159 of 2016 under Order 18 Rule 17 C.P.C. to recall P.W.1 to adduce additional evidence on his side. In the affidavit filed in support of the petition, the plaintiff has stated that the Income Tax Returns were not filed at the time of filing of the suit proceedings, as Chartered Accountant has gone out of station. Further, he has stated that the books of accounts that he was maintaining were misplaced and he found the same very recently. Therefore, it is necessary to recall P.W.1 for adducing further evidence.

3. The petition filed by the plaintiff was opposed by the defendants stating that the plaintiff has not given the list of documents in the plaint

required under Order 7 Rule 14 CPC and failure to produce the documents at the earliest stage would prejudice the defendants. The trial Court taking into consideration the case of the parties, allowed the application, finding that the plaintiff has filed the application immediately after the cross examination of P.W.1 was over. That apart, the trial Court had posted the matter for further examination of witnesses on the side of the plaintiff. Therefore, it cannot be said that the present application to recall P.W.1 was filed at a belated stage.

4. Mr.T.R.Rajaraman, learned counsel appearing for the petitioners/defendants submitted that by allowing the application filed by the plaintiff to recall P.W.1, it would give an advantageous position to the plaintiff to fill up the lacuna. In support of this contention, learned counsel relied upon the following judgments:

(1) (2013) 14 SCC 1 [Bagai Construction, through its Proprietor Lalit Bagai v. Gupta Building Material Store] wherein, the Apex Court has held as follows:

"10. If we apply the principles enunciated in the above case and the limitation as explained with regard to the application under Order 18 Rule 17, the applications filed by the plaintiff have to be rejected. However, the learned counsel for the respondent by placing heavy reliance on a subsequent decision, namely, *K.K.Velusamy v. N.Palanisamy* [(2011) 11 SCC 275] submitted that with the aid of Section 151 CPC, the plaintiff may be given an opportunity to put additional evidence and to recall

P.W.1 to prove those documents and if need arises other side may be compensated. According to him, since the High Court has adopted the said course, there is no need to interfere with the same."

(2) 2009-5-L.W.52 [Vadiraj Naggappa Vernekar (d) through L.Rs. v. Sharad Chand Prabhakar Gogate], wherein, the Supreme Court has held as follows:

"16. In our view, though the provisions of Order 18 Rule 17 CPC 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. 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. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

5. Since the plaintiff has filed the present application immediately after the cross examination of P.W.1 was completed, it cannot be stated that the present application has been filed at a belated stage. Further, the

plaintiff has given the reasons for not producing the documents at the earliest point of time. The trial Court has rightly accepted the reasons stated in the affidavit filed in support of the petition and allowed the application. Since the facts and circumstances of the present case are completely different from the judgments relied upon by the learned counsel for the petitioner, the said judgments are not applicable to the present case, though there is no dispute with regard to the ratio laid down by the Hon'ble Supreme Court of India.

6. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. Since the suit is in the trial stage, I direct the III Additional District Judge, Salem to dispose of the suit in O.S.No.124 of 2015 on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes

21.03.2017

gms

To

III Additional District Court, Salem.

M.DURAIWAMY,J.

gms

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