

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.2340 of 2012
and M.P.No.1 of 2012

G.Somasundaram .. Petitioner

Vs.

C.P.Sanjeevi Mudaliar .. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order in I.A.No.480 of 2011 in O.S.No.133 of 2009, dated 22.2.2012 on the file of the Sub-Court, Ranipet.

For Petitioner : Ms.R.T.Shyamala

For Respondent : Mr.C.Ramesh

ORDER

This revision is directed against the order of the Subordinate Judge, Ranipet, dated 22.02.2012 in I.A.No.480 of 2011 in O.S.No.133 of 2009, dismissing the petition filed under Section 151 of Code of Civil Procedure, 1908 seeking permission of the Court to file additional written statement. The petitioner is the defendant in the suit.

2. The respondent/plaintiff has filed the suit for recovery of a sum of Rs.2,06,630/- with interest at the rate of 9% per annum from the date of plaint to the date of decree and for costs. Resisting the suit, the petitioner/defendant filed his written defence/objection on 17.03.2012 as party in person.

3. Pending suit, the petitioner/defendant filed I.A.No.480 of 2011 seeking to file additional written statement by incorporating certain particulars which were omitted to be mentioned in the original written objection/defence dated 17.03.2012.

4. In the affidavit filed in support of the petition, the petitioner averred that he contested the suit without the assistance of the advocate and only on the last hearing, he appointed an Advocate. When the suit was posted for cross-examination of P.W.1, the Court insisted him to cross-examine P.W.1. Since, he do not know the Court proceedings to cross-examine P.W.1, the petitioner appointed an Advocate and after seeing the written objection, his Advocate informed that the petitioner has not raised legal points in the written objection. Thereafter, the petitioner verified the promissory note and the alleged endorsement made thereon. According to the petitioner, he has not signed in the promissory note and the alleged endorsement made on

the promissory note was also created to save the limitation. Therefore, to raise all legal points, it is necessary to file additional written statement.

5. Resisting the petition, the respondent/plaintiff filed the counter stating that trial of the suit commenced and proof affidavit of PW1 has been filed. Instead of cross-examining PW1, the petitioner has filed the petition to amend the written statement. The ignorance pleaded by the petitioner is not acceptable.

5. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the petitioner has filed the present revision petition.

6. I heard Ms.R.T.Shyamala, learned counsel for the petitioner and Mr.C.Ramesh, learned counsel for the respondent and perused the materials available on record.

7. Learned counsel for the petitioner submitted that the trial Court ought to have received the additional written statement for the reason that on the date of submitting the written statement, neither the petitioner knew the content of the plaint, nor has seen the plaint.

In fact, what has been filed previously is not a written statement and it is only narration of facts.

8. Learned counsel for the respondent submitted that the suit is in part-heard stage and proof affidavit of PW1 was filed and when the suit was listed for cross-examination of PW1, the petitioner has filed the petition to receive additional written statement only to drag on the proceedings. He further submitted that the trial Court has rightly dismissed the petition.

9. On a perusal of the typed set of documents, I find that after entering appearance in the suit in person, the petitioner had filed his defence/objection dated 17.03.2012 in Tamil narrating facts and the same has been received and treated by the trial Court as written statement of the defendant and proceeded the suit further. The petitioner had also appeared in person before the trial Court when the suit was listed for trial. Finally, when the suit was listed on 30.09.2011, the trial Court insisted the petitioner to cross-examine P.W.1. Since, the petitioner does not know the Court proceedings to cross-examine P.W.1, he, thereafter, engaged an Advocate and on seeing the original defence/objection filed by the petitioner, his Advocate advised him to file additional written statement incorporating

certain material facts/legal defence.

10. The trial Court dismissed the petition mainly on the ground that the allegation made by the petitioner is an afterthought and there is no truth in the averment made by the petitioner.

11. On perusal of the proposed additional written statement, I find that the petitioner denied the execution of promissory note in favour of the plaintiff and also denied the alleged endorsement made thereon. A reading of the defence/objection dated 17.03.2012 filed by the petitioner in person would show that the petitioner has narrated only facts and there is no specific denial of the suit promissory note as also the alleged endorsement etc. Without a specific denial and averment in the written statement, the defendant could not cross-examine P.W.1.

12. It is pertinent to note that the defendant in the suit can take his defence in the suit at any point of time. In the present case, only after engaging the Advocate, the defendant came to know the legal defence available to him.

13. Though the suit is part-heard, in the interest of justice and in

order to arrive at a correct conclusion by the trial Court, it is necessary to permit the petitioner to file additional written statement. No prejudice would be caused to the plaintiff if the defendant is permitted to file additional written statement. The plaintiff can very well to file reply statement, if any, to the additional written statement. Therefore, the order of the trial Court is liable to be set aside.

14. In the result:

(a) the Civil Revision Petition is allowed by setting aside the order dated 22.02.2012 made in I.A.No.480 of 2011 in O.S.No.133 of 2009 on the file of the Sub-Court, Ranipet;

(b) the respondent/plaintiff is permitted to file reply, if any, to the additional written statement and the same should be filed within a period of two weeks from the date of receipt of a copy of this order;

(c) after filing the reply statement, the trial Court is directed to dispose of the suit within a period of three months thereafter without giving any adjournments to either parties. Both the parties are directed to co-operate

the trial Court for early disposal of the suit. No costs.

Consequently, M.P.No.1 of 2012 is closed.

03.01.2017

Note:Issue order copy on 19.03.2018
vs

Index : Yes/No
Internet : Yes/No

To

The Subordinate Judge,
Ranipet.



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M.V.MURALIDARAN,J.

VS



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and
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