

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.No.3538 of 2016
and CMP.Nos.18004 of 2016 & 2470 of 2017

1.S.Jaganathan

2.J.Jayanthi

3.Minor.Kavya

(Rep.by this father/Natural/Next friend

1st petitioner s.Jaganathan)

.. Petitioners

vs

1.M/s.Eachanari Enterprises

A Registered Partnership Firm rep.

By its Partner A.Murugasamy

2.C.Sivaraj

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 08.09.2016 made in I.A.No.295 of 2016 in O.S.No.72 of 2014 on the file of IV Additional District Judge, Coimbatore.

For Petitioner
For R1

: Mr.J.Jyothi
: Mr.P.P.Saravana Sowmiyan

ORDER

Defendants 1 to 3 in the trial Court are the revision petitioners before this Court. Fourth defendant in the suit is the second respondent before this

Court.

2. Suit has been filed by the first respondent herein.
3. Therefore, the parties are herein after referred to by their respective ranks in the suit in the trial Court, for the sake of convenience and clarity,.
4. .The suit is one for recovery of money on the basis of mortgage.
5. The mortgage itself is disputed by the defendants.
6. Be that as it may, after Exs.P1 to 3 were marked and evidence recorded, at the argument stage particularly after plaintiff and defendants arguments were over and the matter posted for reply arguments by the plaintiff, plaintiff took out an application in I.A.No.295 of 2016 with a prayer to reopen the plaintiff's side evidence for the purpose of the adducing additional evidence and for production of additional documents.
7. Defendants 1 to 3 resisted the application by saying that it is too belated and it is clearly an after thought. Defendants 1 to 3 also took the stand that the reason given viz., document being held up with the auditor, is very flimsy and untenable.

8. The Trial Court in and by an order dated 08.09.2016 allowed the application.

9. Aggrieved defendants 1 to 3 have filed the instant revision petition.

10. At the time of hearing, Mr.Mr.Saravana Sowmiyan, learned counsel for the first respondent has filed typed set of papers dated 11.12.2016, containing two documents. One is Form A issued by Registrar of Firms dated 28.04.2016 and the other is an Account statement which according to the learned counsel , is an account statement of the second defendant before the Trial Court.

11. It is submitted that the plaintiff wants to mark the above two documents alone by reopening the plaintiff side evidence.

12. In the course of hearing, it is noticed that no prejudice or hardship would be caused to defendants 1 to 3 if the above said documents are allowed to be marked as plaintiff's side evidence, by reopening the plaintiff side evidence, defendants 1 to 3 will have liberty to cross examine the plaintiff's side witness on the additional documents which are being sought to be marked, besides raising objections to the very marking of the documents if the

documents 1 to 3 choose to do so.

13. It is also seen that the suit is of the year 2014.

14. I also noticed from the records that the plaintiff has filed the application for reopening the plaintiff's side evidence (out of which the instant civil revision petition arises) under Section 151 of the Code of Civil Procedure (1908 CPC for brevity) and no other substantial provision of law has been invoked. The application has been filed in a very casual manner. However as the Court otherwise has powers to order such an application, I am inclined to over this in this CRP (owing to the nature of the CRP) but not without deprecating such a casual approach.

15. However, the application has been entertained and allowed in the light of the fact that the plaintiff wants to mark only the above said two documents coupled with the fact and no prejudice will cause to the defendants 1 to 3, if such course is adopted. I do not find any reason to interfere with the order that has been called in question before me.

16. It is made clear that when the plaintiff's side evidence is reopened, the plaintiff will not be permitted to mark any other document (other than the

above said two documents) and the scope of reopening order qua plaintiff's side evidence is abridged to that extent.

17. It is also noticed that the 4th defendant in the suit has remained exparte. For the sake of procedural requirement, 4th defendant has been arrayed as respondent No.2 before me. The learned counsel has made an endorsement that the second respondent is given up.

18. Owing to all that have been stated supra, the Civil Revision Petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

04.04.2017

Index:Yes/No
Internet:Yes/No
kkd

M.SUNDAR, J.

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