

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD Nos.3874 and 3875 of 2016
and
C.M.P.No.19720 of 2016

1. Dr.Vivekananda Subramania Nathan
2. Dr.K.V.S.Latha .. Petitioners in
both CRPs.

vs

Mohammed Yousuff Baig .. Respondent in
both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 24.01.2016 passed by the learned VII Additional Judge, City Civil Court, Chennai in I.A.Nos.4833 and 4832 of 2016 O.S.No.11886 of 2010.

For Petitioners : Mr.Gilbert Peraira
in both CRPs.
For Respondent : Mr.T.A.Sagul Hameed
in both CRPs.

COMMON ORDER

The defendants are the revision petitioners. Being

aggrieved by the common order passed by the Court below in dismissing the applications filed by them under Order 18 Rule 17 of the Code of Civil Procedure to recall PW1 for cross examination and to re-open the plaintiff' side evidence, the present revisions are preferred.

2. Heard both sides.

3. Admittedly, the suit was filed by the respondent/plaintiff seeking specific performance and the suit was taken up for trial during the year 2013 itself and as on 31.10.2013, the matter was posted for the plaintiff's side evidence and for marking of documents. At that stage, the first petitioner herein/first defendant had raised objection in marking of the photo copy of the sale agreement and therefore, the proceedings came to a halt. Earlier the Court below, permitted the respondent herein/plaintiff to mark photocopy of the sale agreement dated 14.02.2006, which was challenged by way of revision by the first defendant before this Court in CRP PD.No.2637 of 2014. As there was no order of stay granted, the matter was posted for the cross

examination of PW1 from 28.02.2014. From then onwards, the matter was posted for the cross examination of PW1 but the defendants have not come forward to cross examine PW1. Therefore, the plaintiff's side evidence was closed. Thereafter, the matter was posted for the defendants side evidence and for nearly forty (40) hearings, the matter was adjourned time and again, but the defendants had not co-operated for the conduct of the case. As there was no representation on behalf of the revision petitioners/defendants, the defendants' side evidence was also closed and on 16.03.2016, the matter was posted for arguments. Even after that there was no progress in the suit as the other revision preferred by the first defendant in CRP PD No.2637 of 2014 was kept pending, without being taken up for hearing. There is no justifiable reason given by the defendants for stalling the proceedings for three full years without cross-examining PW1. Therefore, the trial Judge closed the evidence of PW1 correctly and I see no convincing reason in setting aside the orders passed by the Court below.

4. At this juncture, the learned counsel for the revision

petitioners /defendants requested that the defendants may be given one more opportunity to cross examine the plaintiff on any particular day, that may be fixed by the Court below.

5. Having regard to the said submission made by the learned counsel for the revision petitioners/defendants, this Court is inclined to grant permission to the defendants to cross examine PW1, however, on terms.

6. Considering the fact that the suit is one for specific performance of an agreement to sell, which is an equitable relief, this Court is inclined to set aside the common order dated 24.01.2016 passed by the learned VII Additional Judge, City Civil Court, Chennai in I.A.Nos.4833 and 4832 of 2016 O.S.No.11886 of 2010 in dismissing the applications for recalling PW1 and re-opening the plaintiff's side evidence on the following conditions:

(i) The defendants/revision petitioners shall pay a sum of Rs.20,000/- [Rupees twenty thousand only] to the plaintiff/respondent for the hardship caused to him for the past

more than four years.

(ii) The defendants shall cross examine PW1 on the particular date that may be fixed by the trial court. Further, it is made clear that the cross examination of PW1 shall be completed on the same day, without seeking any adjournment.

7. With the above direction, both these Civil Revision Petitions are allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

vj2

Index: yes/No

Internet: yes

To

The VII Additional Judge, City Civil Court, Chennai

PUSHPA SATHYANARAYANA,J.,

vj2

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23.01.2017

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