

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4359 and 4360 of 2013
and
M.P.No.1 of 2013**

S.Nagaraj .. Petitioner in both the CRPs

Vs.

1.A.Sivanantham

2.S.P.Ramamoorthi .. Respondents in both the CRPs

Common Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.Nos.60 and 61 of 2013 in O.S.No.88 of 2011 dated 24.06.2013, on the file of Sub-Court, Mannargudi.

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(Both the CRPs)

For Petitioner : Mr.A.Ilango

For Respondents : M/s.P.T.Ramadevi (for R1)

Mr.A.Sundaravadhanam (for R2)

COMMON ORDER

The petitioner has filed these Civil Revision Petitions to set aside the order passed in I.A.Nos.60 and 61 of 2013 in O.S.No.88 of 2011 dated 24.06.2013, on the file of the Sub-Court, Mannargudi.

2.Both the Civil Revision Petitions in C.R.P.(PD)Nos.4359 and 4360 of 2013 arise out of the dismissal orders of learned Sub-Judge, Manarkudi made in I.A.Nos.60 and 61 of 2013 dated 24.06.2013 respectively. The revision petitioners in both the Civil Revision Petitions are one and the same.

3.The case of the revision petitioner is that the 1st respondent herein as plaintiff has filed the suit against the revision petitioner in O.S.No.88 of 2011 for recovery of money on the basis of a promissory note said to have been executed by the revision petitioner. Originally there was no such promissory note executed in favour of the 1st respondent and no hand loan was availed by the revision petitioner. Therefore he filed written statement in the above suit denying the case of the plaintiff. It was contended by the revision petitioner that

the above suit came to be filed by the 1st respondent, because of an enmity developed between the revision petitioner and the brother of the 1st respondent.

4. Being so, the trial of the suit took place and the 1st respondent/plaintiff, PW-1 was cross-examined in part by the revision petitioner's counsel and the suit stood posted for further cross-examination of the 1st respondent, PW-1. When the case was finally remained posted on 28.02.2013 for further cross-examination of PW-1, the 1st respondent, both the 1st respondent as well the counsel for the revision petitioner was not present. The counsel for the revision petitioner was unable to represent the case on the said date, due to some unavoidable circumstances.

5. On 28.02.2013 though 1st respondent / PW-1 was not available for cross-examination, the Learned Sub Judge closed evidence of PW-1 and posted for other evidence if any on the 1st respondent's side and adjourned the case to a future date. The closure of the PW-1 evidence, in suo-moto by the learned trial Judge is erroneous and unwarranted, since in the interest of justice and to elucidate the fact before the trial Court, it was indispensable to further

cross-examine the 1st respondent, PW-1.

6. Thereupon the revision petitioner filed two Interlocutory Applications in I.A.Nos.60 and 61 invoking the inherent jurisdiction of the trial Court to reopen the suit and to permit the revision petitioner to cross-examine the 1st respondent. However, the Learned trial Judge on misconception of law and fact has dismissed both the applications holding that the revision petitioner's counsel, despite of sufficient opportunities given by the trial Court has failed to cross-examine 1st respondent. The above two dismissal orders made in I.A.No.60 & 61 are challenged in the present Civil Revision Petitions in C.R.P.Nos. 4359 and 4360 of 2013 respectively.

7. I heard Mr.A.Ilango, learned counsel appearing for the revision petitioner and M/s.P.T.Ramadevi, learned counsel appearing for the 1st respondent and Mr.A.Sundaravadhanam, learned counsel appearing for the 2nd respondent in both the Civil Revision Petitions and perused the entire records.

8. The learned counsel for the revision petitioner would submit that when the 1st respondent/ PW1 was partly cross examined by the

revision petitioner's counsel and the suit stood posted under the caption "For further cross-examination" the Learned trial Judge even in the absence of 1st respondent/PW-1 ought not to have chose to close his evidence. Such order is arbitrary and unsustainable. It is indispensable that the PW-1 has to be cross-examined so as to elucidate the point in controversy of the suit and the same would assist the trial Court to clarify the evidence, issues and disputes between the parties and thereby assist the Court in rendering justice. The Learned trial Judge failed to notice that if the PW-1 is recalled and allowed to be cross-examined, there will be no prejudice caused to the respondents.

9.The revision petitioner ought to have been provided a final opportunity to cross-examine the 1st respondent/PW-1. Therefore the above orders of the Learned trial Judge are erroneous and the same is warranted interference by this Court.

10.Per contra, the learned counsel for the respondent would submit that the filing of the above applications is to protract the suit proceedings. Moreover the revision petitioner having failed to cross-examine the 1st respondent in the earlier occasions despite sufficient

opportunities have been provided by the trial Court, without availing those opportunities, now at a belated stage cannot file the applications to reopen the case for the purpose of cross examination of PW-1 witness and recall him for further exam.

11.The records available before this Court were closely perused and on hearing upon the rival submissions made by either side, this Court is able to see that admittedly the trial Judge has Suo-Moto chosen to close the evidence of PW-1, on 28.02.2013 though then at that particular point of time, the 1st respondent was not available therein in Court hall for cross-examination. The reason assigned by the Trial Court is that the counsel for the revision petitioner was absent and was not interested for cross-examination.

12.In the above factual circumstance, it is needless to say that even if the counsel for the revision petitioner was present on 28.02.2013, the purpose of Cross Examination of the 1st respondent/PW-1 will not have been served, as the witness itself was absent. At this juncture, it would be noteworthy that the opinion of this Court would be otherwise, if the 1st respondent was present on 28.02.2013 subjecting him for cross-examination.

13. Whereas, in the case on hand, the learned trial Judge erred in appraising the above said fact that in any event the cross-examination of PW-1 could not be achieved, due to the absence of the 1st respondent on 28.02.2013. It is pertinent to note here that the Learned trial Judge in the above situation that the PW-1 itself was absent, should have posted the suit by giving a final opportunity to the revision petitioner to conduct further cross-examination in a near future date.

14. Therefore in the light of the foregoing reasons, this Court deems fit to provide one more final opportunity to the revision petitioner to cross-examine the 1st respondent, it is just and necessary to allow the Civil Revision Petitions.

15. In the result:

(a) both the Civil Revision Petitions are allowed by setting aside the order passed in I.A.Nos.60 and 61 of 2013 in O.S.No.88 of 2011 dated 24.06.2013 on the file of the Sub-Court, Mannargudi;

(b) the petitioner/defendant is permitted to cross examine the PW1 within a period of 15 days from the date of receipt of a copy of this order and the trial Court is directed to dispose of the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2017

Note: Issue order copy on 14.09.2017

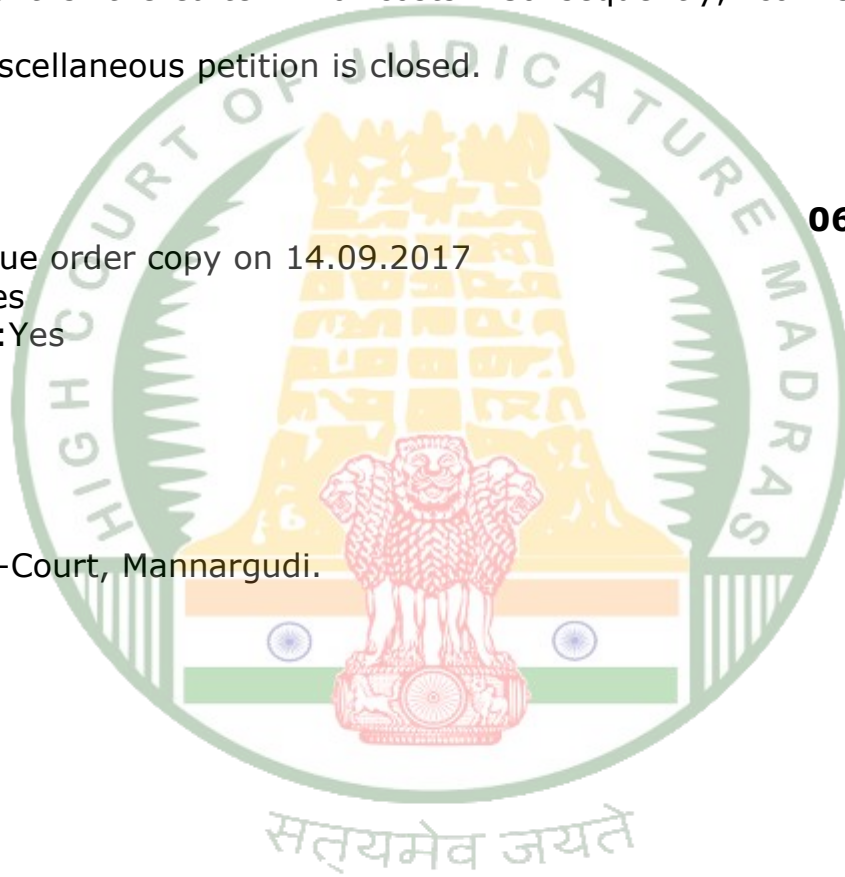
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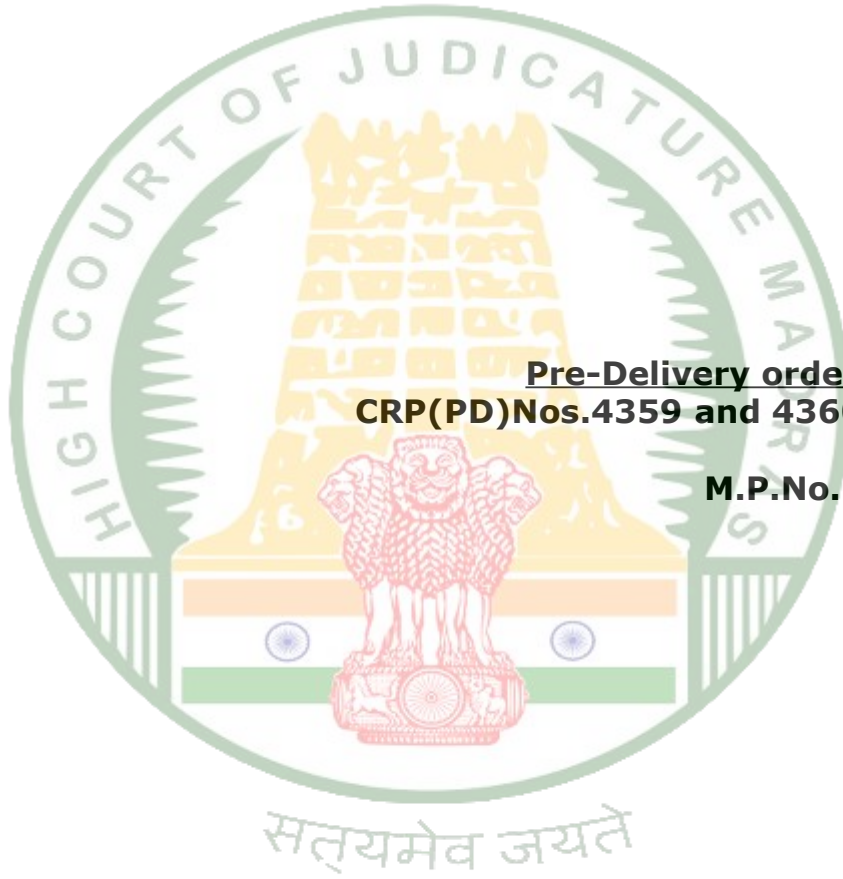
The Sub-Court, Mannargudi.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)Nos.4359 and 4360 of 2013
and
M.P.No.1 of 2013

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