



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2017
(Reserved on 09.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) Nos.1789 to 1791 of 2015

and

M.P(MD) No.1 of 2015

M.Valliappan

... Petitioner in all CRPs/ Petitioner/
Plaintiff

vs.

Ramnath @ Ayothi Chettiar ... Respondent in all CRPs/ Respondent/
First Defendant

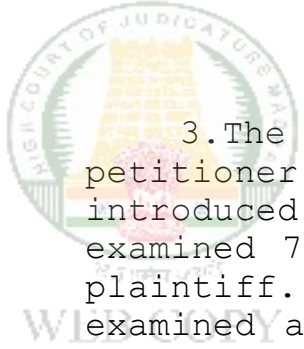
Petitions filed under Article 227 of the Constitution of India, against the fair and executable orders dated 06.01.2015 passed in I.A.Nos.1233, 1235 and 1234 of 2014 in O.S.No.14 of 2011 on the file of the District Munsif, Devakottai.

For Petitioner : Mr.T.R.Jeyapalam
For Respondent : Mrs.S.Srimathi

COMMON ORDER

These three revision petitions are filed against the dismissal of the applications filed to reopen, recall and to receive documents. The revision petitioner herein is the plaintiff in O.S.No.14/2011. When the matter was posted for arguments on 18.12.2014, petitions were filed by him for reopen, recall and to produce documents.

2.The need to file these applications according to the revision petitioner is that in O.S.No.24/2012 between the parties, certain documents were given to the counsel who is contesting that case and the suit was taken up for appeal before the High Court. On 13.03.2013, the High Court has passed a judgment in S.A.No.422/2001 arising from O.S.No.24/2012. The judgment and decree and other documents related to the said suit are necessary documents to support the case of the plaintiff. Since those documents were in possession of his counsel, he was not able to produce it before the Court during trial. Hence, applications to reopen and recall witness to produce and mark those documents are necessary.



3.The Trial Court after taking note of the conduct of the petitioner and also the relevancy of the document sought to be introduced has held that in the present suit, the plaintiff has examined 7 witnesses and 7 exhibits were marked on behalf of the plaintiff. One of the parties to the proposed document was also examined as plaintiff side witness. The documents sought to be marked were in existence even at that point of time, but the revision petitioner/plaintiff had not chosen to mark those documents through that witness. Even the factum of existence of such documents was not whispered in the proof affidavit filed by the witness examined on behalf of the plaintiff. Therefore, there is not merit in allowing these petitions.

4.The learned counsel for the revision petitioner submitted that the Trial Court while dismissing the applications has not considered the merit of the applications and taking note of certain other events unconnected to the facts of the present petitions has dismissed the applications on extraneous reasons. It is further contended that the extraneous reasons stated in the impugned order like dismissal of the previous application with cost are unjustifiable for the reason dismissal of the present applications to reopen and recall is erroneous.

5.It is contended by the counsel for the revision petitioner that the revision petitioner was under the impression that the defendants will enter into the witness box and depose and during cross examination, he can confront them with these documents. Since the defendants have chosen not to let in any oral evidence, it has now become necessary for the plaintiff to reopen and recall witnesses for marking the documents.

6.The short point involved in these three revision petitions is that whether the documents sought to be produced belatedly were not in possession of the revision petitioner during trial and sufficient cause is available to entertain the petitions?

7.Admittedly, the documents relating to the connected suit O.S.No.24/2012 were in possession of the counsel in that case representing the revision petitioner. While so, it cannot be pleaded that the documents were not in the custody of the revision petitioner till filing of these petitions or he was prevented from getting access to the documents by his Advocate.

8.Admittedly, these documents were with the custody of his own counsel who had been holding the documents as the agent of the petitioner. The statute clearly bars reopening, recalling and receiving documents after commencement of trial, unless the situation warrants. In this case, there is no convincing reason why no attempt was made to produce the documents when the plaintiff's witnesses were in the box.



9.No doubt, the conduct of the revision petitioner in filing certain applications have forced the Court to put on record certain observations for dismissing the present petitions. The contention that even putting those observations eschewed the petitions for reopen and recall on the date of argument to produce certain documents which were well within the custody of the petitioner is unsustainable.

10.The Hon'ble Supreme Court in **Bagai Construction vs. Gupta Building Material Store** reported in **(2013) 3 MLJ 185 (SC)** has observed as under:-

'12.After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.'

11.In this case, the documents sought to be relied were within the access of the revision petitioner. But even while examining the witness who were party to those documents, that witness has not whispered about the existence of those documents but only after closure of examination of witness and when the matter was posted for arguments, the revision petitioner has come out with these applications. The other reason stated by the counsel for the petitioner that the revision petitioner thought of confronting those documents, if the defendants mount the witness box is also not in tune with normal course of introducing document



through witness.

12. Therefore, this Court finds no reason to entertain these revision petitions. Hence, the orders dated 06.01.2015 passed in I.A.Nos.1233, 1235 and 1234 of 2014 in O.S.No.14 of 2011 are confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To
The District Munsif,
Devakottai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate, SR No. 61152
+1 CC to M/s.S.M.S.JOHNNEY BASHA, Advocate, SR No. 61267

NBI
PSM/KKR/SAR4/29.06.2017/4P/4C

order made in
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1791 of 2015
20.06.2017