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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2017
(Reserved on 22.03.2017)

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 155 of 2017
and
CMP (MD) No. 612 of 2017

V. Subburam ... Revision Petitioner
Respondent/Defendant
vs.

N. S. Balamurugan ... Respondent
petitioner/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and final order dated 07.12.2016 made in I.A.No.650 of 2016 in O.S.No.121 of 2011 on the file of the Subordinate Judge, Uthamapalayam.

For Petitioner : Mr. P. Santhosh Kumar
For Respondent : Mr. K. R. Laxman and Mr. B. Saravanan

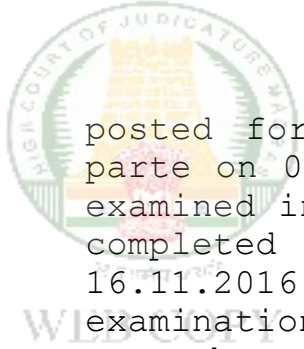
ORDER

The defendant is the revision petitioner herein. The revision petition is directed against the order of the Trial Court allowing the re-open petition to summon the attesting witnesses and the scribe of the suit pro note.

2. The case of the revision petitioner is that he is the defendant in the suit for recovery of money based on pro-note allegedly executed by him. The very execution of the pro-note is denied.

3. The Trial Court after framing issues, have examined witnesses on both sides and the case is posed for arguments. At this stage, the plaintiff has filed re-open petition to examine further witnesses on his side, which was allowed by the Trial Court without considering the fact that by re-opening the case, the plaintiff is trying to fill up the lacuna and the same will prejudice the revision petitioner/defendant.

4. The learned counsel for the respondent submitted that the plaintiff side evidence was closed on 21.06.2016 and the suit was



posted for defendant side evidence. The defendant remained ex parte on 05.07.2016. The ex parte order was set aside and he was examined in chief on 24.10.2016. The cross examination of DW1 was completed on 01.11.2016. Thereafter, the case was adjourned to 16.11.2016 for argument. While preparing for argument, the non examination of the attesting witnesses and the scribe to the pro-note due to inadvertence, came to notice of the counsel, hence immediately he sought leave of the Court to re-open. The Trial Court after considering the merit of the plea, rightly allowed the petition on cost of Rs.300/- payable by 09.01.2017. There is no prejudice likely to cause to the revision petitioner by allowing the petition. Hence, the revision petition has to be dismissed.

5.The plaintiff who has laid the suit on pro-note, has not examined the attesting witnesses and its scribe, but allowed to close his side evidence and had proceeded further. Only after the fixation of the date for arguments, he has realised the omission and wanted to reopen the case. The dates and events in the case indicates that the evidence of plaintiff side closed on 21.06.2016. The defendant failed to marshal his witnesses when the case was posted for his evidence on 05.07.2016. Hence, he was set ex parte. Later, his application to set aside the ex-parte order was allowed and he has been examined as DW1. Thereafter, his side evidence was closed on 01.11.2016. On the day when the case was listed for argument, the plaintiff has filed the petition to re-open. In normal circumstances, such an application filed on the day fixed for argument only give an inference that it is filed to delay the proceedings or to fill up the lacuna or to cover up the negligence.

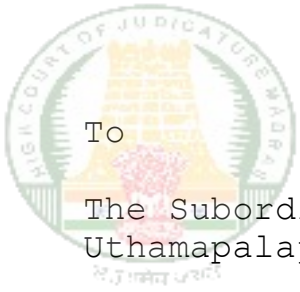
6.In this case, the application to reopen is filed by the plaintiff. So, there is no gain for him in dragging the proceedings. The suit is based on pro-note. So, non examination of attesting witnesses will be fatal to his case. The omission to examine the attesting witness cannot be a known omission. The Trial Court has rightly observed that by allowing the petition, both the plaintiff as well as the defendant will get an even opportunity to prove their rival contention regarding the execution of the suit pro-note. For arriving at a right conclusion and render justice, examination of the attesting witnesses is just and necessary. There can be no contra opinion to the above observation made in the impugned order. Therefore, there is no error in the said order to interfere.

Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Co)

/True copy/



To

The Subordinate Judge,
Uthamapalayam.

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+1 cc to Mr.K.R.Laxman , Advocate in SR.No. 17747

+1 cc to Mr.P.Santhoshkumar , Advocate in SR.No. 17714

nbi

AE/SV MMS/SAR3/05.04.2017/3P/4C

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