



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.256 of 2017 (PD)
and
C.M.P (MD) No.1178 of 2017

Abbas Ali

.. Petitioner/Petitioner/Petitioner

Vs.

A.Nazir

.. Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records pertaining to I.A.No.6 of 2017 in I.P.No.15 of 2006, on the file of III Additional Sub Court, Madurai, dated 03.01.2017 and set-aside the same and thereby allow the revision.

For Petitioner : Mr.M.Kaliraj

ORDER

This petition has been filed by the petitioner to set aside the order made in I.A.No.6 of 2017 in I.P.No.15 of 2006 passed by the learned III Additional Sub Court, Madurai, dated 03.01.2017.

2.The petitioner is the Creditor in the Insolvency Petition in I.P.No.15 of 2006. The respondent is the debtor. The petitioner filed I.P.No.15 of 2006 to adjudicate the respondent as insolvent. The petitioner let in evidence and closed his side evidence on 19.10.2016. The respondent examined himself as R.W.1 and filed his proof affidavit on 09.11.2016 and case was adjourned to 16.11.2016 for cross-examination of R.W.1 and after taking number of adjournments, the counsel for the petitioner cross-examined R.W.1. The respondent side evidence was closed and insolvency petition was posted for arguments. At that stage, the petitioner filed I.A.No.6 of 2017 to re-open the respondent side evidence. According to the petitioner, on 14.12.2016, the counsel for the petitioner was not well and therefore, no cross-examination was done on that day. Some vital questions were not put to R.W.1 by Junior counsel. Therefore, he filed petition for re-opening the evidence as R.W.1.

3.The learned Judge considered the fact that Insolvency petition was adjourned on number of hearings at the request of the petitioner for cross-examination of R.W.1 and on 14.12.2016 cross-



examined the R.W.1 and the reason given by the petitioner for re-opening is not valid and it is contrary to the Court records, dismissed the application.

4. Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner reiterated the grounds raised in the Revision and submitted that the learned Judge closed the evidence of R.W.1 before he could cross-examine in full. Before the date of arguments, the petitioner filed application for re-opening. The learned Judge without giving an opportunity to the petitioner to put forth his case dismissed the application.

6. I have heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

7. From the materials on record, it is seen that the reason given by the petitioner that his counsel could not examine the R.W.1 on 14.12.2016 due to illness, is contrary to the Court records. The learned counsel for the petitioner on that day cross-examined the R.W.1. Further, the contention of the learned counsel for the petitioner that without hearing the petitioner, the learned Judge dismissed the application is also contrary to the facts. From the order, it is seen that the learned Judge heard the counsel for the petitioner and considering all the materials and especially the fact that the Insolvency Petition is pending from the year 2006, dismissed the application. In the circumstances, the learned Judge has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

SD/-
ASSISTANT REGISTRAR (RECORDS)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The III Additional Sub Court,
Madurai.
+1CC TO MR.KALIRAJ, ADVOCATE, SR NO.7439

AM
MAS/MR:20.02.2017:2P/3C

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