



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.85 of 2017 (PD)

and

C.M.P (MD) No.311 of 2017

Tmt.Sornalatha

....Petitioner/Petitioner/Defendant

Vs.

S. Dharmaraj

....Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal order, dated 15.11.2016 passed I.A.No.337 of 2016 in O.S.No.103 of 2011 on the file of the 1st Additional District Judge, Madurai and allow the present Civil Revision Petition.

For Petitioner : Mr.M. Venkatesan

For Respondent : Mr. S. Sukumaran

ORDER

The petitioner has filed the Civil Revision Petition to set aside the Fair and Decretal order, dated 15.11.2016 passed I.A.No.337 of 2016 in O.S.No.103 of 2011 by the 1st Additional District Judge, Madurai.

2.The Petitioner is defendant and the respondent is the plaintiff. The respondent filed the suit in O.S.No.103 of 2011 before the District Court, Madurai for recovery of money. The petitioner admitted her signature in the Promissory note, but denied passing of consideration. In view of admission of signature in the promissory note, the petitioner was directed to let in evidence first. The petitioner filed I.A.No.337 of 2016 for permission to examine her husband first as a witness and for permission to examine herself at a later stage, if necessary. According to the petitioner, she is suffering from illness and is taking treatment. She cannot travel for long distance and cannot stand and sit for long time and she was advised to take bed rest. She produced medical certificate Ex.P1.

3.In the said I.A., the respondent filed counter and opposed the petitioner's application and submitted that Medical Certificate is dated 07-11-2016, while the petition was filed on 05.10.2016. The

petitioner has filed this petition only to fill up the lacuna. If she is unable to appear before the Court and give evidence, she can be examined by appointing an Advocate Commissioner.

4.The learned judge considering the averments made in the affidavit and counter affidavit, Ex.P1 Medical Certificate produced by the petitioner and judgement relied on by the counsel for the respondent, dismissed the application holding that the petitioner has not given any valid reason for permission to examine her husband first and examine herself at later stage, if necessary.

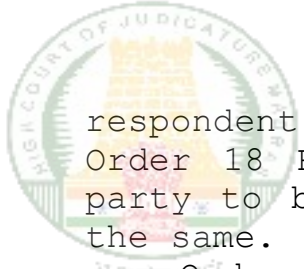
5.Against the said order of dismissal, dated, 15.11.2016, passed in I.A.No.337 of 2016 by the learned I Additional Sessions Judge, Madurai, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the petitioner has given valid reason for permission to examine her husband first and to examine herself at later stage, if necessary arises. The learned Judge has not properly appreciated the Medical Certificate produced by the petitioner. The ailment of the petitioner is recurring one and she has to get constant medical treatment. As per Order 18 Rule 3(A) of CPC, the Court can grant permission to party to be examined as later stage, after examination of witness by recording reason for granting such permission. In the present case, the petitioner has given valid reason and sought for permission due to her illness. The reasoning of the learned Judge for rejecting the application that Medical Certificate produced by the petitioner to show that she requires bed-rest only for six weeks is erroneous.

7.The learned counsel for the respondent submitted that only to avoid giving evidence and to fill in lacuna and to drag on the proceedings, the petitioner has come out with the present I.A., and prayed for dismissal of the Civil Revision Petition.

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

9.The petitioner has sought for permission to examine herself at later stage after examining her husband first on the ground of illness. She has produced a Medical Certificate to show that she cannot travel for long distance and cannot stand and sit for long time and Doctor advised her to take bed rest. The petitioner has contended that she cannot stand and sit. The learned Judge rejected the Medical Certificate on the ground that Certificate was issued on 07.11.2016. While the case was posted for her evidence on 24.08.2016 the petitioner has not chosen to appear before the Court. The learned Judge accepted the contention of the



respondent that Medical Certificate of petitioner is vague. As per Order 18 Rule 3(A) of CPC the Court can grant permission to a party to be examined at later stage by recording the reason for the same.

Order 18 Rule 3(A) of CPC reads as follows:-

"3A. Party to appear before other witnesses:- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

10. In the present case, the petitioner has sought permission on Medical ground. The learned Judge has not properly appreciated the request. In the circumstances, the order of the learned Judge is liable to be set aside and hereby set aside.

11. In the result, the Civil Revision Petition is allowed and order passed in I.A.No.337 of 2016, dated 15.11.2016 is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assitant Registrar(C)

/True copy/

Sub Assistant Registrar

To

The 1st Additional District Judge,
Madurai.

+1cc to M/s.M.VENKATESAN, Advocate, in SR No.10860

AM/MR
AAM-CM MSA/21.03.2017 3P 3c

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