

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (PD)Nos.1046 & 1047 of 2018
& C.M.P.Nos.5488 & 5489 of 2018

1. G.Senthilkumar
2. Minor Surudhiksha

... Petitioners in both the Civil
Revision petitions

Vs.

1. P.Rajavelu
2. P.Rajendiran

... Respondents in both the Civil
Revision petitions

Prayer:Civil Revision Petitions are filed under Article 227 of the Constitution of India pleaded to set aside the order and Decreetal order dated 06.12.2017 made in I.A.Nos. 266 & 267 of 2017 in O.S.Nos.16 & 17 of 2012 on the file of the Subordinate Judge, Sankari.

For Petitioners : Mr.K.P.Jotheeswaran

ORDER

WEB COPY

The relief sought for in both the revisions are to set aside the fair and Executable orders dated 06.12.2017 made in I.A.Nos. 266 & 267 of 2017 in O.S.Nos.16 & 17 of 2012 on the file of learned Subordinate Judge, Sankari.

the Additional written statements that were dismissed by the Trial Court, on the ground that petitioners have taken a new plea. On a perusal of the records, it is not in dispute that the respondents filed the suit against the petitioners in O.S.Nos.16 & 17 of 2012 for recovery of money. It is not in dispute that the petitioners have already filed their written statements on 14.09.2012 in both the suits themselves. After completion of pleadings, issues were framed and trial was also commenced. Subsequently, the Trial Court closed the evidence on the side of the plaintiff. When the matter was came for defendants side evidence, at that time defendants had filed I.A.Nos.266 & 267 of 2017 to receive the additional written statements. The Trial Judge considered the facts that the defendants had taken a new plea in the additional written statements. Thus, the Trial Court dismissed the petitions and refused to receive the additional written statements on file.

3. According to petitioners, even though they have already taken the defence in the written statements, only, in order to explain the defence more specifically, they wanted to file the additional written statements which will not cause any prejudice to the respondents. The learned counsel for the petitioners has placed reliance on the decision of *Olympic Industries Vs Mulla Hussainy Bhai Mulla Akberally and others reported in (2009) 15 SCC 528*.

4. Heard, learned counsel for the petitioners and perused the available record.

5. The Trial Court has closed the evidence on the side of the plaintiffs and started to commence the evidence on the side of the defendants. At that point of time, the revision petitioners filed I.A.Nos.266 & 267 of 2017 to receive the Additional written statements. They have admitted the execution of the document and also they have already raised all the defence in the written statements filed in the above suits. The learned counsel for the petitioners contended that even though they have taken the defence in their written statements still they want to explain their defence in a concise form. The decision relied on by the learned counsel for the petitioners is not applicable to the facts of the present case on hand.

6. At this juncture, it is pertinent to refer the provisions of order VI Rule 2 (1) of CPC which reads as follows:

WEB COPY

P.VELMURUGAN, J.,

vum

"Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved"

7. Hence, it is settled law that every pleading should contain only ***facta Probanda***, and not ***facta probantia*** it means, every pleading must state the facts, and not the evidence by which they are to be proved. In short, material facts only need to be pleaded and not evidence. Therefore, this Court does not find any illegality or infirmity in the order passed by the trial Court.

8. Hence, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous petitions are closed. No costs.

03.04.2018

Index:Yes/No

Speaking order / Non speaking order

vum

To

The Subordinate Judge, Sankari

C.R.P.(PD)Nos.1046 & 1047 of 2018
& C.M.P.Nos.5488 & 5489 of 2018