

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.4103 of 2017
and CMP.No.19220 of 2017

Kasayal

.. Petitioner

Vs

M.Baskar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 22.09.2017 made in I.A.No.473 of 2017 in O.S.No.242 of 2013 on the file of I Additional District Judge, Erode.

For Petitioner : Mr. V.S.Kesavan

For Respondent : Mr.Karthikeyan

ORDER

This civil revision petition is filed to set aside the fair and decretal order dated 22.09.2017 passed in I.A.No.473 of 2017 in O.S.No.242 of 2013 on the file of I Additional District Judge, Erode.

2. The respondent herein has filed the suit in O.S.No.242 of 2013 before the I Additional Judge, Erode seeking permanent injunction. In the above said suit, the petitioner herein has filed an application in I.A.No.473 of 2017 in O.S.No.242 of 2013 to condone the delay in filing the document and permitted to mark the document on the side of the petitioner. The respondent has filed the counter affidavit and objected for allowing the petition. The trial Court has considered the contest of both the parties and dismissed the said application by holding that the document has relied upon by the petitioner cannot be termed as document. Therefore, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the respondent would submit that the petitioner has not rely the said document at the time of filing the written statement. The petitioner has filed the said document at belated stage. Therefore, the admissibility of the said document is strongly objected by the respondent. Therefore, the Court below has rightly dismissed the said application.

5. Heard the rival submissions made by the counsel for both sides and perused the materials available on record.

6. The petitioner has filed the application in I.A.No.473 of 2017 in O.S.No.242 of 2013 for marking of the documents in the aforesaid suit. The aforesaid document is a vital document to the suit. Therefore, the trial court by dismissing the said application has deprived the right of the petitioner.

7. The learned counsel for the petitioner has also relied upon the Judgment of this Court reported in **2014 (1) MLW C 229 in the case of Thayanban vs Ponnammal** and Others, wherein it is stated that condoning the delay in allowing the application would be without prejudice to proof with regard to admissibility of documents and the other party is at liberty to raise all legal objections relating to admissibility, proof and relevancy of documents at the time of marking of document. The learned counsel for the petitioner has further relied upon the Judgment of the Hon'ble Supreme Court reported in **(2001) 3 SCC 1 in the case of Bipin Shantilal Panchal vs. State of Gujarat and another**, it has been held as follows:

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such

objections to be decided at the last stage in the final Judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed)

8. In the light of the above Judgment, the Court below has lost the sight to consider the application for marking of the document. For that contention, the respondent has objected for marking of the document and the same shall be considered at the time of arguments.

9. In the light of the above said fact, the learned counsel for the respondent cannot dispute the decision of the principle laid down by the Hon'ble Apex Court for marking of the document. Therefore, I have no hesitation to set aside the order passed by the Court below.

10. In the light of the above said facts and circumstances of the case and the decision cited supra, the order passed by the Court below is hereby set

aside. This Court is inclined to pass the following orders:

i) The impugned order passed in I.A.No.473 of 2017 in O.s.No.242 of 2013 on the file of the I Additional District Court, Erode, is hereby set aside. However, liberty is granted to the respondent to make objections, if any, at the time of marking of the document.

ii. The learned I Additional District Judge, Erode, is directed to dispose of the suit in O.S.No.242 of 2013 as expeditiously as possible, preferably, with a period of six months from the date of receipt of a copy of this order..

iii) Taking into consideration, the suit has been filed in the year 2013. On instructions, both the parties undertake that they will co-operate for speedy disposal of the suit before the trial court.

11. On the above said terms, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2018

kkd

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

D.KRISHNAKUMAR,J.

Kkd

To

Additional District Judge,
Erode.



CRP (PD)No.4103 of 2017
and CMP.No.14299 of 2017

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