IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :27.02.2018

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THE HONOURABLE MR.JUSTICE **D. KRISHNA KUMAR**

CRP(PD)No.4806 of 2017
and
CMP.No.22639 of 2017

1.S.N.Paramasivam
2.P.Saravanan
3.Pavayee ... Petitioners

Vs .

1.R. Chandra
2.R. Gopalakrishnan ... Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of IndiaS to set aside the fair and decreetal order dated 28.11.2017 made in I.A.No.931/2017 in O.S.No.92/2011 on the file of the Subordinate Judge, Tiruchengode.

For Petitioners : Mr.M/s.R.Marudhachalamurthy

For Respondents : Mr.T.L.Thirumalaiswamy

O R D E R

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This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 28.11.2017 made in I.A.No.931/2017 in O.S.No.92/2011 on the file of the Subordinate Judge, Tiruchengode.

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2. The learned counsel for the petitioners has submitted that the trial court has commenced its trial and on 02.04.2017, PW1 was examined and subsequently, the case was posted to 26.04.2017 for cross examination of PW1. The petitioners/defendants also cross examined PW1. Thereafter, at the stage of the examination of plaintiff side witnesses, the present application in I.A.No.931/2017 in O.S.No.92/2011 has been filed to recall PW1 for the purpose of cross examination. The court below has dismissed the said application by holding that the said application filed by the petitioners is a belated one and that too, with an intention to fill up the lacuna and drag on the proceedings in the said suit. Challenging the above said order, the revision petitioners have filed the present application.

3. Learned counsel appearing for the revision petitioners would submit that at the time of examination of the plaintiffs side witness, the instant application was filed and there is no delay on the part of the revision petitioners in filing the application and further the revision petitioners will examine PW1 only on the basis of the pleadings in the plaint. Therefore, an opportunity shall be granted to the revision petitioners for cross examination of PW1 and a particular date may be fixed by this court for cross examination of PW1.

4. Learned counsel for the respondents would submit that the petitioners would not traverse beyond the defence taken and the

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pleadings in the suit. He further submitted that the petitioners shall not seek adjournment to protract the proceedings in the suit and shall also cooperate for disposal of the trial court in the aforesaid suit.

6. The contention of the learned counsel for the petitioners is that an opportunity shall be granted to the petitioners to cross examine PW2 on the basis of the pleadings in the suit. Therefore, this court has no hesitation to set aside the order passed by the court below. Hence, the order of the court below is liable to be set aside.

7. In fine, the impugned order passed by the court below in I.A.No.931/2017 in O.S.No.92/2011, is set aside and consequently, the Civil Revision Petition stands allowed with a direction to the court below to fix a date for cross examination of PW1 and thereafter to proceed the suit in accordance with law. No costs. Consequently, connected miscellaneous petition, is closed.

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Index:Yes/No

Speaking order/Non-speaking order

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D.KRISHNA KUMAR., J.

gv

To

The Subordinate Judge,

Tiruchengode.

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