IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.235 of 2018
and
C.M.P.No.1371 of 2018

Kannan .. Petitioner

Vs

Raja .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1178 of 2017 in O.S.No.212 of 2010, dated 04.12.2017, on the file of the learned District Munsif, Tirupattur, Vellore District.

सत्यमेव जयते

For Petitioner : Mr.A.Gokulakrishnan

For Respondent :Mr.T.M.Hariharan

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O R D E R

This revision petition has been filed to set aside the fair and decreetal order passed in I.A.No.1178 of 2017 in O.S.No.212 of 2010,

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dated 04.12.2017, on the file of the learned District Munsif, Tirupattur, Vellore District.

2. The petitioner has filed the suit in O.S. No. 212 of 2010 for declaration and permanent injunction against the respondent herein. In the aforesaid suit, evidence on both sides were concluded and the suit was posted for arguments. At that stage, the petitioner filed an application in I.A.No.1178 of 2017, under Section 151 of CPC, seeking a direction to reopen the evidence on the plaintiff's side and the said I.A was dismissed by the Court below on 04.12.2017. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner would submit that the petitioner has filed the application to re-open the plaintiff's side evidence for examining a local villager. If an opportunity is granted to the petitioner, he would examine the local villager on a particular date and therefore the order passed by the court below is liable to be set aside.

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4. The learned counsel for the respondent would submit that the petitioner has already filed an application in I.A. No. 613 of 2017 and the said application was allowed on 07.06.2017. Thereafter, the same was posted for examination of plaintiff's side evidence on 13.06.2017, 28.06.2017 and for more than 20 occasions. Despite the case being adjourned several times, the plaintiff's side evidence was not examined. No steps were taken by the plaintiff to produce witnesses on his side. Therefore, the case was posted for arguments on the side of the petitioner/ plaintiff. Again the instant application has been filed to re-open the case. The petitioner has not shown any bonafide intention to record the evidence, although an opportunity was given to the petitioner. Hence, the revision petition is liable to be dismissed.

5. This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

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6. It is found that the petitioner has filed the application to re-open the plaintiff's side evidence, after the evidence on both sides

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were concluded. Further, it is an admitted fact that the petitioner has already filed I.A. No. 613 of 2017 and the court below has allowed the application on 07.06.2013. Inspite of several adjournments, the petitioner has not taken steps to produce evidence on the aforesaid dates. Further, in the light of the decision of the Supreme Court in ***Ram Rati vs. Mange Ram (D) through L.R.s and others [2016 (5) CTC 555]***, wherein paragraph 18 and 20 reads as follows:

> *"The settled legal position under Order 18, Rule 17, read with Section 151 of the C.P.C., being thus very clear, the impugned Orders passed by the Trial Court as affirmed by the High Court to recall a Witness at the instance of the respondent "for further elaboration on the left out points", is wholly impermissible in law.*
>
> *We are informed that during the pendency of the Appal, the evidence has been closed and what remains is only the final arguments. In view of the above, we direct the Trial Court to dispose of the Suits expeditiously and preferably within one month from the date of receipt of a copy of this Order."*

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7. This Court further relies on the decision of the Supreme Court in ***Gayathri Vs. M.Girish [2017 (4) CTC 321]***, wherein paragraph 8 reads as follows:

> *"In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed:-*
>
> *"… In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the*

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plaintiff has filed both the applications after more than sufficient opportunity 2 (2013) 14 SCC 1 8

had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

8. In view of the above decisions of the Hon'ble Supreme Court and considering the facts and circumstances of the case, the submissions made by the learned counsel for both sides, this Court is not inclined to interfere with the order of the court below and the revision petition is liable to be dismissed.

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9. In the result, the civil revision petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/ No

Speaking order/ Non speaking order

avr

To

The District Munsif,
Tirupattur,
Vellore District.

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D. KRISHNAKUMAR J.,

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