

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).Nos.953 to 955 of 2018

and

CMP.Nos.5102 to 5104 of 2018

Veerasegaran

.. Petitioner in all CRP's

Vs

1.M/s. Sivasakthivel Chits & Finance Corporation,
Rep by its Managing Partner
R.Perumal, S/o. Late.Rajamanickam
Having Office at No.7/45,
Kamaraj Nagar, Ariankuppam,
Pondicherry-605 007.

2.Lakshmi

.. Respondents in all CRP's

COMMON PRAYER

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 09.01.2018 made in I.A.Nos.937,938 & 939 of 2017 in O.S.No.1664 of 2007 on the file of I Additional District Munsif Court, Pondicherry.

For Petitioner
(in all CRP's)

: Mr.SP.Yuaraj

COMMON ORDER

The Civil Revision Petitions are taken up for final disposal at the admission stage itself.

2. According to the revision petitioner, in OS.No.1664 of 2007, the revision petitioner has filed applications in IA.No.937 of 2017 to reopen the defendant side evidence and IA.No.938 of 2017 to recall DW1 and IA.No.939 of 2017 to condone the delay in filing the list mentioned documents and receive it on file. According to the revision petitioner, the revision petitioner filed application for production of income tax return of the first respondent/plaintiff and the same was allowed by the court below against which the plaintiff filed review and the same was dismissed by the court below. The plaintiff did not produce the income tax return. The revision petitioner traced out the hand written letter by the plaintiff along with the seal and signature of company and the petitioner mentioned about the said document in paragraphs 6, 7, 9 and 11. The revision petitioner could not file the petition cited document at an earlier stage due to non availability and misplacement of the said document. Therefore, the revision petitioner filed the present applications. Therefore, delay in filing the document is beyond the

control of the revision petitioner. According to the learned counsel for the revision petitioner, the court below without taking into consideration of the contention of the revision petitioner dismissed the said application by stating that the aforesaid application has been filed at the fag end of the suit. Therefore, the court below has misinterpreted provision under Order 18 Rule 17 of the Civil Revision Petition for reopen and recall of the witnesses. The said vital document is required and the said application can be allowed at any stage. Therefore, the order of the court below is liable to be set aside.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. On perusal of the order passed by the court below, the revision petitioner has filed applications in IA.No.937 of 2017 to reopen the defendant side evidence and IA.No.938 of 2017 to recall DW1 and IA.No.939 of 2017 to condone the delay in filing the list mentioned documents and receive it on file. The afoersaid suit has been filed by the respondent in the year 2007 and the written statement has been filed on 22.09.2008. The trial was commenced and the evidence of both

sides concluded and posted for arguments. At this stage, the present applications have been filed by the revision petitioner.

5. The Hon'ble Supreme Court has already considered in the case of ***Ram Rati Vs. Mange Ram (dead) through legal representatives*** reported in **(2016) 11 SCC 296**, wherein it has been held as follows:

"12. In Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, this principle has been summarised at paras 25, 28 and 29 (SCC pp. 414-15)

25. In our view, though the provisions of Order 18 Rule 17 of the Civil Procedure Code have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination".

6. Further in the case of **Gayathri Vs. M.Girish** reported in **2017 (4) CTC 321**, wherein the Hon'ble Supreme Court has held as follows.

12. In the case at hand, it can indubitably be stated that the Defendant-Petitioner has acted in a

manner to cause colossal insult to justice and to the concept of speedy disposal of Civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha! is apt here to be stated for guidance of Trial Courts. In view of the aforesaid analysis, we decline to entertain the Special Leave Petition and dismiss it with Costs, which is assessed at Rs.50,000/- (Rupees fifty thousand only). The Costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the Trial Court within eight weeks hence, which shall do the needful to transfer it to the Stage Legal Services Authority. If the amount is not deposited, the right of defence to examine its Witnesses shall stand foreclosed.

7. In the light of the facts and circumstances of the case and the decisions cited supra, this Court is not inclined to interfere with the order passed by the court below. There is no error or illegality in the orders passed by the court below and the Civil Revision Petitions are liable to be dismissed.

8. The Civil Revision Petitions are dismissed with above observations. Consequently, the connected miscellaneous petitions are closed. No costs.

13.03.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
lok

To

The I Additional District Munsif Court,
Pondicherry.



WEB COPY

D. KRISHNAKUMAR J.,

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