

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3413 of 2016 and C.M.P.No.17362 of 2016

Rathinakidhari

... Petitioner

Vs

Manickam

... Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 25.04.2016 made in I.A.No.98 of 2016 in O.S.No.36 of 2010 on the file of the Additional District Munsif, Chengam.

For Petitioner

: Mr.P.Mani

For Respondent

: Mr.A.Rajeshkanna

सत्यमेव जयते *****

ORDER

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The respondent herein has filed a suit in O.S.No.36 of 2010 against the petitioner for declaration and permanent injunction. Petitioner has filed written statement on 22.3.2010. The petitioner has filed an I.A.No.98

of 2016 to receive the additional written statement filed by the petitioner. The said application was dismissed by the court below. Hence, the petitioner has preferred the present Civil revision petition before this Court.

2 According to the petitioner, in the additional written statement filed by the petitioner, petitioner has raised any new plea and only facts as stated already in the written statement. The petitioner has stated the additional facts in the additional written statement. Therefore, there is no prejudice would be caused to the respondent if the application is allowed. Hence, the order passed by the court below is liable to be set aside.

3 In **OLYMPIC INDUSTRIES VS. MULLA HUSSAINY BHAI MULLA AKBERALLY AND OTHERS [(2009)15 SCC 528]** the Hon'ble Supreme Court has held as under:

"17.As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter-statement the reasons for taking such new plea viz. he could trace out the lease deed pertaining to the lease only when he was cleaning the boxes. The respondents have also not disputed as to the existence of the lease deed, only they are disputing the filing of the additional counter-statement at such a belated stage. This being the position, we are of the view that even if the examination of PW 1 or his cross-examination was over,

then also, it was open to the court to accept the additional counter-statement filed by the appellant by awarding some costs against the appellant.

18. It is also well settled that while allowing the additional counter-statement or refusing to accept the same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs."

4 In the light of the decision of the Hon'ble Supreme Court cited supra, the application to receive additional written statement ought to have been allowed by the court below. Therefore, this Court has no hesitation to set aside the order passed by the court below. The impugned order passed by the learned Additional District Munsif, Chengam in I.A.No.98 of 2016 in O.S.No.36 of 2010 is set aside.

D.KRISHNAKUMAR,J.
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5 Accordingly, the Civil revision petition is allowed. However, it is open to the court below to provide an opportunity to the respondent at the time of trial in the suit if necessary. No costs. Connected miscellaneous petition is closed.

20.02.2018

Index: Yes/No
Internet:Yes/No
vaan

To
The Additional District Munsif, Chengam

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