

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2018
CORAM
THE HONOURABLE MR.JUSTICE M.S. RAMESH
C.R.P.(PD) No.50 of 2017
and
C.M.P.No.317 of 2017

Southern Housing Corporation Ltd.,
No.10 & 11, Theagaraya Road,
Theagaraya Nagar,
Chennai - 600 017. ... Petitioner(Defendant)
Versus

P.R.Subramanian ... Respondent(Plaintiff)

Civil Revision Petition filed under under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 04.11.2016 made in I.A.No.12351 of 2016 in O.S.No.2502 of 2011 on the file of the learned XIX Additional Judge, City Civil Court at Chennai.

For Petitioner : Mr.P.Chandrasekar
For Respondent : Mr.R.Thiagarajan

O R D E R

This Civil Revision Petition has been filed challenging the order dated 04.11.2016 made in I.A.No.12351 of 2016 in O.S.No.2502 of 2011 on the file of the learned XIX Additional Judge, City Civil Court at Chennai, by and which the application filed by the petitioner/defendant for recalling the witness viz., P.W.1 for further cross-examination, was dismissed.

2.The only reason, on which the application was dismissed by the Court below, is that though many opportunities were given on various dates to the petitioner/defendant, he had not made use of the same.

3.The learned counsel for the petitioner submitted that in all the hearing dates, which has been referred to in the order, he was present, except two hearing dates and that he had cross-examined PW.1 only partially.

4.The learned counsel for the respondent/plaintiff, on the other hand, contended that since the suit is of the year 1996 and the cross-examination commenced in the year 2016, it would not be appropriate to permit the petitioner to further cross-examine PW.1 after lapse of such a long time. It is further submitted by the learned counsel for the respondent/plaintiff that for the past two years, the medical and physical condition of the plaintiff had deteriorated, including loss of memory, and that he is physically and mentally not in a position to depose.

5.The submission of the learned counsel for the respondent/plaintiff is that though the plaintiff is physically weak, it is however denied that the plaintiff is not in a sound state of mind.

6.Since the only ground on which the the Trial Court rejected the application, is that inspite of many opportunities being given, the petitioner/defendant did not make use of the same. In my view, by fixing up a time limit for the parties to complete the cross-examination, the witness may be recalled, which would meet end of the justice.

7.Nevertheless, the physical and mental condition of the plaintiff is also a relevant factor for such cross-examination. In this regard, it would be appropriate to direct the Trial Court to decide the issue afresh and while granting permission to the petitioner to cross-examine PW.1, the Trial Court shall take into account the feasibility for such permission, in view of the physical and mental condition of the plaintiff.

8.In the light of the above observation and direction, the Civil Revision Petition is allowed and the impugned order is set aside. The matter is remanded back to the Trial Court for fresh consideration. Subject to the decision to be taken by the Trial Court on the physical and mental condition of PW.1, the Trial Court shall permit the petitioner to recall and cross-examine PW.1, within one week from the date of receipt of a copy of this order and such cross-examination shall be completed on the same day. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt
To
The XIX Additional Judge,
City Civil Court, Chennai.
Copy to
The section officer,
VR Section,
High court, Madras

+2cc to Mr. P.Chandrasekar, Advocate SR.No. 89022

C.R.P. No.50 of 2017
and

C.M.P.No.317 of 2017